OVERSIGHT OF THE PUBLIC INTEGRITY SECTION OF THE DEPARTMENT OF JUSTICE

(Jack Nard Case)

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE PUBLIC INTEGRITY SECTION OF THE DEPARTMENT OF JUSTICE

OCTOBER 7, 1981

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OVERSIGHT OF THE PUBLIC INTEGRITY SECTION OF THE DEPARTMENT OF JUSTICE

(Jack Nard Case)

WEDNESDAY, OCTOBER 7, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2228, Dirksen Senate Office Building, Senator Dennis DeConcini (acting chairman of the committee) presiding.

Also present: Senators Hatch and Grassley.

Staff present: Tom Parry, chief counsel, Subcommittee on the Constitution; Jim Phillips, counsel, and Duke Short, chief investigator, Committee on the Judiciary; Kim Pearson, counsel to Senator Hatch; and Romano Romani, counsel to Senator DeConcini.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DECONCINI [acting chairman]. The committee will come to order.

We welcome Senator Grassley of Iowa and Senator Hatch of Utah.

I have been requested by the chairman of both the full committee and the Constitution Subcommittee to chair these hearings.

We will hear testimony and statements from Mr. Hultman.

First, I will have a statement here for the record and then yield to the Senator from Utah. Then we will go to the witness this morning.

The Senator from Iowa may also have a statement.

During the 1979 Department of Justice budget authorization process, the Committee on the Judiciary was told in response to written interrogatories that no formal external evaluation of the public integrity section has been conducted.

The public integrity section directly administers over 100 separate Federal criminal statutes. It also jointly administers almost as many Federal criminal statutes with other sections within the Criminal Division.

I had no doubt then, and I have no doubt now, that oversight of this unit by this committee is necessary and proper.

During the 1980 Department of Justice budget authorization process, the chief of the public integrity section was nominated to the position of special counsel of the Merit Systems Protection Board.

Senator Hatch, myself, and seven other members of this committee, a bipartisan majority I might add, requested that this individual who had been the only chief of this sensitive Federal prosecutorial office be made available to the committee for questioning prior to his confirmation by the Senate Governmental Affairs Committee.

Not only was there a need to ask this individual and his superiors how the functions and responsibilities of this section had been discharged but serious allegations had been raised in the press regarding how cases in that section had been prosecuted.

During the course of last year's summer months, the committee secured the Department's agreement to make this witness available and obtained an agreement by which the committee would gain access to the public integrity section's closed criminal files.

One of 16 of the closed files that the committee desired to scrutinize was the public integrity section's handling of an allegation made against Federal officials by John A. Nard of Pennsylvania.

Also during the 1979 Department of Justice authorization process, the Department responded to a committee inquiry that in sum, each of the many allegations made by Mr. Nard were thoroughly reviewed and looked into. Considerable time was devoted to the allegations at all levels. There is no factual substantiation for any of Mr. Nard's allegations of corruption.

During our initial investigation into the public integrity section last Congress, we were told by several individuals that the chief of the public integrity section had advised them that the *Nard* case had been thoroughly and exhaustively investigated.

The committee, therefore, attempted to determine on what basis the public integrity section made such statements regarding the *Nard* case. In other words, because the public integrity section professed that the *Nard* case had been thoroughly and exhaustively investigated, we determined to scrutinize their handling of the *Nard* case as part of the overall investigation of this section and overall oversight.

In a September 4, 1979, communication to the committee, the criminal division stated: "In the Department's review of John Nard's allegation, U.S. Attorney Hultman was interviewed by Mary Wagner's office for one day in July 1976."

One of Mr. Nard's allegations was that former U.S. Attorney Hultman had mishandled his case during the 4 years Mr. Hultman had it under active investigation.

Because the Department of Justice told the committee in May 1979 that all of the Nard allegations were thoroughly reviewed and no factual substantiation was found and because former U.S. Attorney Hultman had in large part been a factor in that decision, as we had been informed by the Department in September 1979, it was our desire to question Mr. Hultman at the December hearing regarding his handling of the Nard matter.

In our judgment, the only way to determine if the public integrity section of the Department of Justice had properly looked at Nard's allegations of the mishandling of this case by former U.S. Attorney Hultman was to first determine if former U.S. Attorney Hultman had in fact mishandled the Nard investigation as a U.S. attorney.

This is the exact same procedure we followed in our review of the Vesco investigation, the Ernest Fitzgerald investigation, and the other cases involved in our review of the public integrity section through oversight.

During our review of Mr. Hultman's handling of the Nard investigation, several questions were raised which we determined only Mr. Hultman could address at the December 11 hearing.

These questions were raised by the committee's review of the Nard investigation files maintained by Mr. Hultman while he was the U.S. attorney in Iowa.

At the committee's request, Mr. Hultman's files were sent to the Criminal Division office here in Washington. Those files were reviewed by committee staff prior to the hearing on December 11, 1980. It was the review of those documents contained in Mr. Hultman's files that formed the basis for the line of questioning propounded to Mr. Hultman at the hearing.

Subsequent to the December 11, 1980, hearing, it was determined by Senator Hatch and myself that some of Mr. Hultman's statements were contradicted by the documents so found in those files.

In our opinion, we considered the magnitude of the contradictions sufficient to refer the December 11 testimony of Mr. Hultman and the pertinent contradictory documents to the Department of Justice for their review with no recommendation.

Our decision was based on our belief that the contradictions were material to our investigation, were misleading with regard to the actual events which took place, and were made under oath before a duly constituted federal body.

With regard to the question of intent—that is, were Mr. Hultman's contradictory statements of December 11 made with specific intent to mislead or obstruct justice—we felt unqualified and, in fact, without authority to determine. It was for that reason we desired to refer the matter to the Department of Justice for their review.

Since that time, Mr. Hultman has made a number of public allegations concerning his treatment before this committee. He has requested that we hold another day of hearings to allow him to clarify his previous testimony. That basically is the purpose of today's hearings—a purpose which is all the more urgent and important, inasmuch as Mr. Hultman has since then been nominated to serve again as U.S. attorney in Iowa.

This committee will shortly have to review that nomination in terms of its suitability.

It is against that background that we welcome Mr. Hultman back before our committee. He will be given full opportunity to rectify any misimpressions we may have received when he first testified last December. He will also be asked to review some of the aspects of his handling of the *Nard* case so that this committee can be privy to the full and complete understanding of what transpired and whether the handling of this case by either the U.S. attorney's office or the Department of Justice was deficient.

One final note: The Senator from Utah, Senator Hatch, has been reluctant to play too active a role in the present investigation surrounding the case of Jack Nard because of his prior association with Mr. Nard many years ago.

However, I have asked Senator Hatch to actively participate in today's hearing because I believe his familiarity with the details of this complex case will immeasurably enhance the committee's efforts.

I have also asked Senator Hatch to make available to me and my staff, the staff of the subcommittee, and even some of his personal staff, namely Mr. Pearson and Mr. Phillips.

Once again, let me reiterate my hope that today's hearing will satisfactorily answer the questions left hanging after last December's hearing.

I would like to welcome you, Mr. Hultman. After the other statements are made, we will swear you in and proceed.

The Senator from Utah.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Before we turn to the substance of today's hearing, I believe it might be helpful to quickly put into its proper context the theme this committee is pursuing with this investigation.

I think the chairman has done a commendable job of doing that, but I would like to add a few words to it.

It is accurate to say that we are delving into matters rarely, if ever, examined by a legislative oversight committee. They are matters that by their nature require that we proceed with the utmost care and cautiousness.

The term "prosecutorial discretion" is not one that you can find in Black's "Law Dictionary". Yet this term is one of the most important in our system of criminal justice.

Prosecutors are quick to claim absolute freedom over their criminal investigations—to bring cases to formal prosecution or to decline to do so—without any second-guessing by outsiders.

To be sure, there is something to be said for allowing considerable latitude and reposing our trust in those charged with the awesome responsibilities of deciding, in truth, who goes to jail or who does not.

Absent unusual circumstances, this committee might not delve too deeply into the "politics" behind prosecutions—an intellectual path strewn with the sort of ambiguities and shades of meaning and individual judgment that can frustrate the best intentioned legislative inquiry.

And yet we have a clear oversight responsibility that just as clearly, I submit, we in the Senate have not fulfilled in several related areas.

No. 1, the nationwide U.S. attorney system, with its Central Supervisory Office in the Department of Justice. This committee is called upon to confirm these vital links in our criminal justice system and too often it is without any careful scrutiny whatsoever.

No. 2, the vast Justice Department bureaucracy, including the Criminal Division and its Public Integrity Section, that are charged with resolving the allegations of criminal activities of public officials.

No. 3, the grand jury system that is a critical element of our criminal justice system but which has been the subject of widespread complaints that it is too often failing to do what it was designed to do—to protect the innocent from the abuses of overzealous, underzealous, or otherwise incompetent or unfit prosecutors.

No. 4, the Federal judiciary, composed of lifetime-tenured Federal judges who pass through the committee during the confirmation process. We also have passed several Federal judicial discipline and conduct mechanisms, and these hearings will help us to evaluate the effectiveness of this new statute.

The theme we are pursuing is by no means an academic exercise born of senatorial curiosity. For the past 2 years, there have been a number of disturbing reports, many of which have been extensively treated in the press, that can be summed up by the term "abuse of prosecutorial discretion." There have been too many apparently well-grounded questions of too many criminal investigations for us to ignore.

In many ways, the pattern we are examining is more important than any single case.

The most celebrated case involves international financier Robert Vesco, and the yet unresolved allegations of a cover-up that may have corrupted the criminal justice system from a grand jury to the White House in the previous administration.

It even goes into prior administrations.

Another case involves the well-known Air Force whistle-blower, A. Ernest Fitzgerald, who was subjected to a smear and harassment campaign after he exposed vulnerabilities in our national security apparatus.

Without going into details at this time, because we will get into this in more detail, this case involves allegations of obstruction of justice, perjury, and tampering with sworn affidavits by highly placed officials in our Government.

These are only two of the best known cases.

Another involves a Federal judge in Texas who, according to press reports that have not yet been denied, participated in some 18 cases involving banks and individuals to whom the judge was greatly in debt. It was so blatant a conflict of interest that the Justice Department, after an abortive investigation, tried to force the judge's resignation. The judge refused and still sits on the bench.

Other cases involved alleged Justice Department laxity regarding the improprieties by high officials in our energy bureaucracy and in our civil service system.

Senator DeConcini and I have requested the necessary funds to enable us to utilize adequate staff to resolve these important and troubling matters. We hope that our investigations, public hearings, and subsequent reports will not only contribute to a better public understanding of our criminal justice system but will suggest ways to improve the machinery of this system that so profoundly affects our basic civil liberties.

I cannot say at this date, of course, what we will find.

At one end of the spectrum, there is the possibility of a series of criminal conspiracies to thwart justice—conspiracies that may have taken shape at high levels of our Government.

Or we might find that the Justice Department's often-criticized bureaucracy has functioned poorly because of the incompetence of key personnel—however well-intentioned. That would be bad enough.

Or we might find, after a thorough review of each case and its files, a series of individual circumstances to justify the decisions that have been criticized. That would be the happiest outcome—not only for the reputation of the individuals involved but also it would indicate that our criminal justice system is healthy.

As for the John A. Nard matter, let me preface my comments with a brief explanation of the issues involved in that case so that we understand, at least in part, what is going on here.

There is a more formal report by staff that is backed up by a considerable number of documents.

John A. Nard, a Pittsburgh, Pa., building contractor contracted in the late-1960's to build two meat handling facilities for Armour & Company—one in Pittsburgh and the other in Sioux City, Iowa.

Mr. Nard and Mr. Hultman first met in 1971 when Nard asked Hultman to investigate alleged perjury in lawsuits filed against him by Armour for breach of contract with respect to both plants.

In each of these cases, Nard was found in breach of contract on the basis of testimony that was clearly perjurious in our opinion, as will be demonstrated in the body of the report for those of you who care to read it.

Nard also was hindered in the Pittsburgh trial by the absence of Armour documents favorable to Nard which had been withheld by Armour at the time of the criminal trial.

Adverse judgments in the two cases cost Nard, he claims, and his business partners, they claim, almost $1.5 million in foregone profits and restitution of funds.

The Pittsburgh judgment also led to a tax evasion prosecution related to Armour funds which Nard allegedly diverted to construction of a private home.

The record of the case indicates that Nard never paid Armour money for his house and that Armour officials themselves paid some $69,000 for that purpose after termination of the Pittsburgh plant project.

Armour's payments for the house which followed an Armour audit of Nard's books that showed no discrepancies in his financial operations formed the basis for the diversion of funds theory on which Armour's Pittsburgh lawsuit and the IRS prosecution against Nard were based.

The diversion theory was dismissed by Mr. Hultman's successor, James H. Reynolds, as factually erroneous and an apparent attempt by Armour to make Nard look like a crook.

Reynolds' assessment was based on a review of the same materials Nard had given Hultman several years before.

My own view of the record generated in this case over the last 13 years has convinced me beyond doubt that Mr. Nard was the victim of perjured testimony. I believe there is subornation of perjury in this case and an almost inexplicable unwillingness by the Justice Department to examine and act on any documentation provided them by Nard—and there was significant documentation provided.

Our own recent committee investigation produced additional evidence of perjury.

The transcript of an investigator's interview that raised the strong possibility of additional perjury can be found at Exhibit 39-A of the staff report that Senator DeConcini and I released on Monday and gave to all members of the Judiciary Committee, as well as to the public.

John Nard—I believe an innocent victim of the system—not only lost about $1 million as a result of judgments against him in those cases but has had, if his claims are true, his record besmirched by an income tax prosecution related to income he never even received.

The illusory income that formed the basis for the tax prosecution, as I have expressed before, had its genesis in the perjured testimony presented in the first of the civil suits against Nard. All of this is thoroughly explained, by the way, in the staff report I just mentioned.

I would hope that the Department of Justice will study this report, as well as the record of today's hearing and then move right away to do what it should have done a long time ago. That is, open proceedings to clear the record of John Nard.

There is one other matter I want to address before we hear from our witness, Mr. Hultman, and certainly before that, Senator Grassley, our colleague.

For the past several months, allegations have been made in the press and elsewhere that there is something improper in my participation in the Nard investigation, because I once served as Mr. Nard's attorney, prior to my election to the Senate in 1976.

Let me point out that a long time ago, I believe in May 1977, I waived all legal fees owed by Mr. Nard to me. The reason I did is not because they were not due and owing. The reason I did is because I did not want Nard's case to be hurt by the fact that he owed me, a U.S. Senator, fees prior to the time that I was elected.

I might mention that Mr. Nard has never paid a fee to me in all the time that I have known him, although in 1977 he claims he could have paid those fees in full.

I assert publicly that even if I left the Senate today, I would not allow Mr. Nard to pay me those fees—not because I do not think they were due and owing at the time but because I have waived them. As far as I am concerned, they are no longer due and owing, and they have not been since that time.

In addition, because I wanted Mr. Nard to have a fair and objective analysis of his problem, I asked Senator DeConcini, who was in the majority at that time, to investigate this matter and that we would cooperate with him in any way to shorten the time necessary for investigation because all of us are very busy here.

I want to thank him personally, because I think he has done an incredibly good job.

During that process, as he has mentioned to you, he has asked me to loan staff to him to assist him in the investigation; and we have done so. The staff who have worked on this report are formal Constitution Subcommittee staff members and subject to both of our control, as I am the chairman and he is the ranking minority member.

I might mention also that the real question here today is not really whether Senator DeConcini and I have handled this in a way that pleases everybody in this country. The question is whether or not the staff report, which is an extensive report, is accurate.

If it is accurate, then Mr. Nard has been badly treated. We will let you draw your own conclusions as to who deserves the blame for the bad treatment.

The major question is whether an injustice has occurred.

If it has not occurred, then we have to find that out. The only way to do it is to get into it.

Senator DeConcini has asked me to participate in the hearing and to assist him. I do know a little bit about the case, and I do know a lot about Mr. Nard.

I might also add that Mr. Nard has been a difficult person to deal with by everybody concerned. He has felt over the last 13 years that he has been so badly treated and so completely destroyed that he has fought back much longer than any other person I have ever seen who feels that they have been badly treated.

I think he has fought back with irritation to everybody concerned, but it is not important whether Mr. Nard has a perfectly wonderful personality or not. The question is: Was he treated fairly and properly? Has an injustice occurred, and who is responsible for that injustice?

Both Senator DeConcini and I have instructed our investigators to investigate this matter objectively and to look as much for the innocence of Justice Department members and as much for the good faith of Mr. Hultman as they possibly could, as well as anything which is wrong.

I think they have done that.

On the other hand, let me just express to Mr. Hultman here personally that if there is anything wrong with this report and if there are any inaccuracies in it, we want to correct them. That is one reason for this hearing.

I would also mention that Senator DeConcini and I, as a result of the prior hearing which I did not attend or participate in or even have any influence in, other than giving staff assistance, did feel that there were a number of erroneous statements made at the hearing.

As we looked over that matter, we felt that this was a matter that really should be turned over to the Justice Department.

The two Senators from Iowa came to me in my office and said that they felt that there may be an injustice to Mr. Hultman. They did not feel that you have had an adequate opportunity to explain those discrepancies.

In their presence, I immediately called Senator DeConcini and asked him to hold up on the letter.

They indicated Mr. Hultman would like another opportunity to clear up any discrepancies.

I asked Senator DeConcini if he would allow Mr. Hultman that privilege and that opportunity.

I think that has been good, because I think that the record is now made. Certainly, Mr. Hultman you will have every opportunity to explain your side of this. We want you to have every opportunity. I hope for everybody's sake that you can explain some of the problems that have arisen.

I want to compliment the Senators from Iowa for their concern about you as a constituent and for their concern about this matter, because it is an important matter. There has been a lot more heat than light on this.

Frankly, the investigation has helped us to put it in greater perspective. It still raises a lot of very serious questions and a lot of very serious issues—not only concerning Mr. Hultman but also concerning the Justice Department.

I personally believe that the report has not only been well done and well researched but makes a very good case in favor of Mr. Nard. I commend any person interested in this matter to read it, because it is extensive and is filled with detail. It is difficult to understand. Once they read it, they may have Mr. Nard calling them also because of the great interest he has in this matter.

With that, Mr. Chairman, I will conclude.

Senator **DeConcini**. Thank you, Senator Hatch.

Let the record be corrected. I understand, Mr. Hultman, you have not formally been nominated, or at least the nomination has not been sent here yet.

Mr. **Hultman**. Senator, I do not have any ideas; so I cannot address that.

Senator **DeConcini**. I think there has been advice that it is in the process in the White House, but it has not been received. I want the record to so show that.

The Senator from Iowa, Senator Grassley.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator **Grassley**. Thank you, Mr. Chairman.

On that specific point, before I start my statement:

I think it was the last week in July, Senator Jepsen and I signed a letter to the Justice Department and the White House recommending Evan Hultman for District Attorney for the Northern District of Iowa.

Senator **DeConcini**. Thank you for the clarification.

Senator **Grassley**. I want to thank my dear colleagues, Senator DeConcini and Senator Hatch, for holding this hearing. As many of you know, I have been waiting for this day since Senator Hatch suggested this back in early May.

I must say, however, that this situation leaves me with both the good news and the bad news feeling.

The good news is that this private citizen, Mr. Hultman, is finally being given the opportunity to respond to allegations that have been made about him but that have never been made to him.

I believe that today's forum will be very fair and equitable.

The bad news is that as I sit here this morning, I have concerns greater than ever before about the nature of what this committee is up to with these investigations and the price we might be paying for this type of activity.

I raised these concerns at the Judiciary Committee hearing last week which considered a resolution for the funding of these investigations—a resolution that I voted for.

I raised concerns that what should be a legitimate oversight function for this committee in regard to the functioning of the public integrity section could easily be turned into a super court of appeals for those individuals dissatisfied with the results of the decisions of courts and grand juries around the country.

The natural result of that would be, of course, second-guessing or Monday morning quarterbacking of the decisions of sincere and dedicated members of the Federal bench and officials of the Department of Justice.

I received at that meeting—the meeting last week of the Judiciary Committee—very positive reassurances from both Senator Thurmond and Senator DeConcini that we would never retry cases nor second-guess anyone. I believe that those assurances were made in good faith.

On Monday, however, I received a very thick copy of a new report on the matter before us today. Sadly, that report did the very things the committee had been assured would not happen.

It was very much a document of second-guessing and retrying.

For instance, and referring now to the various Federal judges involved in the many past decisions in this case, we are told in this report that those judges made decisions curiously—that is on page 18 of the report—and overlooked alternatives—that is on page 19.

Also, on page 19, it says that these judges committed oversight of evidence.

On page 28, these judges failed to take into account evidence.

On page 28, that these judges wrote decisions which were contracted by the record.

On page 29, that these judges wrote sloppy decisions.

On page 31, that these judges wrote decisions which contained an inexplicable feature.

On page 45, that they had finding which were without foundation.

On page 47, we also read of a judge ignoring the evidence.

On page 47, that failure to study the evidence was not the only oversight of the same judge.

On page 71, we read from all this and more that the individual is entitled to a fair trial but never got one.

My colleagues, I would suggest to you that this is second-guessing and retrying. If it is not, I do not know what is.

As to this being the oversight of the public integrity section, perhaps I am wrong. However, in reviewing this report, I see no reference to the public integrity section at any point.

In other words, the public integrity section is not even mentioned in any of the 71 pages of this report.

Shifting now from my broad concerns over the nature of what this committee is supposed to be investigating to the details of its handling of this particular case, I must point out what most of you know and what probably my colleagues on this committee are tired of hearing Senator Denton and myself say—we are not lawyers. I, for one, am not prepared or qualified to discuss the scholarly points of the procedural due process, but I do know and understand fundamental fairness.

Frankly, I do not think it was fair to have given Mr. Hultman the extremely short notice that he received in December.

I do not think it was fair that a report was written accusing him of criminal conduct which never mentioned the fact that he had been cleared of those charges.

I do not think it was fair that that report was leaked to the press when he was given no notice of it.

I do not think it was fair that three reports have been written for members of the committee, supposedly analyzing his handling of a particular case when the authors of the reports never discussed the matters with Mr. Hultman.

I do not think it was fair that his letters were never answered.

I do not think it was fair that it took 6 months for him to be provided with the specifics of the supposed conflicts of his testimony on December 11, 6 months after the general allegations had been leaked to the press.

Finally, I do not think it was fair that some of the documentation has still not been made available to him or myself.

One specific example of that is that I asked for the tapes of Mr. Nard.

We sit here today and attempt to pass judgment as to whether these Federal judges and Justice Department officials have treated individuals fairly. Perhaps we should remember the admonition of the Lord that those without sin should cast the first stone.

As well as not being a lawyer, I am not a judge. If it were necessary and proper for me to pass judgment as to whether the witness today committed criminal acts by the manner in which he conducted a grand jury, I would not have the legal expertise to do so.

Fortunately, even if it were proper, it would not be necessary since that question has already been resolved in another more qualified forum.

The current U.S. attorney in the northern district of Iowa, a Democrat successor to Mr. Hultman, has completed an extensive investigation of Mr. Nard's allegations of criminal misconduct against today's witness.

That investigation included 34 interviews conducted across the country by the Secret Service, as well as presentations to a grand jury on at least three separate occasions with various witnesses, including Senator Hatch.

That grand jury cleared Mr. Hultman of those allegations by Mr. Nard.

I would ask that excerpts from Mr. Reynolds' letter to that effect be placed in the record at this point.

Senator DECONCINI. Without objection, it is so ordered.

[The aforementioned letter follows:]

United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF IOWA
P. O. BOX 4710
CEDAR RAPIDS, IOWA 52401
TELEPHONE—AREA 319 NO. 366-2411 EXTN. 503

August 17, 1981

The Honorable
Orrin G. Hatch
and
The Honorable
Dennis E. DeConcini
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Senators Hatch and DeConcini:

I am writing this letter in response to reports of apparent misunderstandings arising from my letter to you of September 24, 1980, concerning the nature and scope of my examination of what has been characterized as the "Nard complaint."

Let me again emphasize that my examination of the charges of John Nard of Swickley, Pennsylvania, was limited to only his complaint that the investigation by Mr. Evan Hultman, my predecessor in office, was thwarted in some manner from reaching the end of an indictment. I operated in this investigation with at least two presumptions:

(1) That there was prejudice as alleged by Mr. Nard in the underlying two civil cases, in Sioux City, Iowa and Pittsburg, Pennsylvania, since that was asserted by Mr. Hultman to Clark Mollenhoff, Senator Orrin Hatch, Mr. Nard, his partner, Porter Scott, as well as Mary Wagner in her review of the matter for the Justice Department, and

(2) That the ending of the longest investigation conducted during Mr. Hultman's term without

a documented conclusion was not in the normal course of such matters.

I limited the investigation to simply (1) was Mr. Nard's complaint about the Hultman investigation fully aired by the Justice Department, and (2) if not, was there any probable basis for Mr. Nard's complaint that the investigation has been improperly effected. I was unable to satisfy myself of point (1) due to the lack of adequate Justice Department records or explanation of Ms. Wagner; so I undertook point (2). Point (2) was concluded with the Grand Jury deciding to seek no further evidence.

There was never a determination by me or the Grand Jury that: (a) the underlying claims of Mr. Nard of perjury in the two civil cases was true or not, nor (b) that the conduct of the investigation by Mr. Hultman was complete or a proper exercise of prosecutorial discretion. The quality of the investigation or the prosecutorial discretion by one United States Attorney is not reviewable by another United States Attorney, but only by either the appropriate section at the Justice Department under the Attorney General, the Congressional Judiciary Committees in their oversight capacities, or the appropriate court of law.

I want to make very clear that all my investigation and letter report to you means is that the claim by Mr. Nard that Mr. Hultman's Grand Jury investigation was improperly influenced was, as is often the case, not able to be proven or disproven and that absolutely no conclusion was reached as to the truth or not of Mr. Nard's claim about the underlying perjury in the two civil cases or the quality of Mr. Hultman's examination of those claims. I hope this will clear up any confusion on these matters. Feel free to contact me if there is any further uncertainty.

I am,

Sincerely,

JAMES H. REYNOLDS
United States Attorney

Senator **Grassley**. Similarly, the questions raised as to whether perjury was committed by this witness during his testimony before this committee on December 11, 1980, have also been reviewed by a more qualified source than myself.

The Ethics in Government Act charged the Office of Senate Legal Counsel to advise and to consult committees of the Senate with respect to questions which might arise in the course of any investigation.

That office—the Office of Senate Legal Counsel—did review this witness' testimony and compared it to documents submitted by staff. It informed the committee, and I quote:

> Our own review of the material, as measured against the standards for a perjury prosecution, persuades us that the material does not reach the level of known falsehood which constitutes perjury.

I would ask that the memorandum from the Office of Senate Legal Counsel be incorporated into the hearing record at this point.

Senator **DeConcini**. Without objection, it is so ordered.

Senator **Grassley**. I would repeat that the grand jury in Iowa cleared this witness of criminal wrongdoing and the Senate Legal Counsel has advised that the December 11, 1980, testimony did not constitute perjury.

I must add, of course, that it appears that these facts must have gotten through to somebody, as the report released this week has shifted its emphasis from the earlier reports—that is, of criminal wrongdoing—to now raising the question of professional competence.

Of the original 16 alleged conflicts, 11 of those have been dropped with a new 2 added, for a new total of 7 alleged conflicts.

In conclusion, my colleagues, I would say on a very positive note that I feel as if my efforts to see to it that this witness is treated in a fair and equitable manner have not been in vain.

I am pleased that we now have the specific complaints and this hearing to have the witness reflect on those complaints.

I want to thank those responsible for both the record and the hearing, particularly Senator Hatch, Senator DeConcini, and to some extent Senator Thurmond.

I will listen with great interest to hear what the witness and the interested members of this committee have to say. I do intend to pose questions from time to time.

Thank you.

Senator **DeConcini**. Thank you, Senator Grassley.

Let me make the record very clear that this is an oversight hearing. We are not a jury; we are not here to determine the guilt or innocence of Mr. Hultman or anyone else regarding the *Nard* case or the validity of accusations.

The purpose of this hearing is far from where we left it in December.

At that time, this committee, under my chairmanship, had devoted hundreds of hours investigating the propriety of the decisionmaking process of the public integrity section.

As a result of that investigation, one of the cases that came to our at attention was the *Nard* case.

In our deliberations, we had before us the testimony of Mr. Hultman. We felt that some of his responses to questions asked were not accurate with the record.

We turned over the record of the December 11, 1980, meeting to the legislative legal counsel for the Senate and asked for their advice.

The Senator from Iowa is correct; the Office of the Senate Legal Counsel indicated that there was not any evidence to substantiate perjury in their judgment. I think some reference was made to a possible obstruction of justice but no recommendation was made.

It was my recommendation—after consultation with Senator Hatch—that we not take any action at that time. We forwarded this recommendation to the Justice Department. At the request of both of the Senators from Iowa, and Mr. Hultman, we held a further hearing on this particular subject. Mr. Hultman's testimony of December 11, 1980, was taken at this hearing.

The letter from Mr. Reynolds, the present U.S. attorney, which the Senator from Iowa asked to be inserted in the record, will be inserted in its entirety.

Senator Hatch.

Senator HATCH. I think we should insert the entire legal counsel letter into the record because Senator Grassley only read part of that.

I agree with Senator DeConcini and Senator Grassley that there is no desire to retry any of these cases, but we do have a desire to do our oversight responsibility to see if there has been abuse of prosecutorial discretion. Has the system been abused? Have people been treated unjustly? Have individuals not had fair treatment? Have the public integrity section and the Justice Department itself acted in any abuses?

I might just put the whole letter into the record, but I will read the full paragraph of Senate legal counsel.

This is a letter to Senator Thurmond and Senator Biden, the chairman and ranking minority member of the committee, myself, and Senator DeConcini from Michael Davidson dated April 2, 1981.

I am citing the next to the last paragraph where he concludes:

> Our own review of the material as measured against the standards for a perjury prosecution persuades us that the material does not reach the level of knowing falsehood which constitutes perjury. At most, the materials may be read to cast doubt on Mr. Hultman's credibility or the thoroughness of the investigation he conducted. This would not approach the level for a perjury charge.

I think that needs to be put in the record.

Senator DECONCINI. Without objection, the entire letter will be inserted in the record.

[Aforementioned material follows:]

MICHAEL DAVIDSON
COUNSEL
M. ELIZABETH CULBRETH
DEPUTY COUNSEL
PAULA A. SWEENEY
CHARLES TIEFER
ASSISTANT COUNSEL

United States Senate
OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, D.C. 20510

MEMORANDUM

TO: Hon. Strom Thurmond
Hon. Joseph R. Biden, Jr.
Hon. Orrin Hatch
Hon. Dennis DeConcini

FROM: Michael Davidson

DATE: April 2, 1981

RE: Referral of Testimony of Witness Before the Subcommittee on Improvements in Judicial Machinery to Department of Justice for Consideration of Possible Perjury

Kim Pearson, who is currently investigating counsel for the Committee on Labor and Human Resources and formerly worked with counsel for the investigating subcommittee of the Judiciary Committee led by Senators DeConcini and Hatch, has asked my office to submit a memorandum to you concerning possible referral of certain testimony to the Department of Justice.

That testimony was given by Evan Hultman, formerly United States Attorney for Iowa, at a hearing on December 11, 1980. The hearing concerned an investigation by the Justice Department's Public Integrity Section about the alleged failure by the Iowa U.S. Attorney's Office to fully investigate a complex matter involving alleged perjury in federal civil trials in Sioux City, Iowa, and Pittsburgh, Pennsylvania, in the early 1970s, and related matters. Mr. Hultman had been U.S. Attorney in Iowa at the time of the original Iowa investigation, and he was questioned by Senator DeConcini about his conduct in presenting the alleged perjury to three Iowa grand juries. Kim Pearson has analyzed Mr. Hultman's December testimony, matching his statements against documents which may contradict it.

This office is charged by the Ethics in Government Act, 2 U.S.C. § 288g(a) to "advise, consult, and cooperate with--... any committee or subcommittee of the Senate ... with respect to questions which may arise in the course of any investigation."

I have several suggestions.

First, it may be that further consultations are warranted prior to deciding whether there should be a referral. For example, the informal opinion, on a confidential basis, of the U.S. Attorney for the District of Columbia could be requested. Alternatively, some of the former federal prosecutors on Senate staffs, such as those working for Senator Roth's Permanent Subcommittee on Investigations, might be asked to review the materials.

Second, if the Committee on the Judiciary considers making any decision in this matter, it would be appropriate to take up the matter in closed session. Senate Rule 26(5)(b)(3) provides that a committee meeting may be closed when the matters to be discussed "will tend to charge an individual with crimes or misconduct." Such a referral would tend to make such a charge. Since Mr. Hultman would be facing a potential Justice Department investigation, it might be prejudicial for a public account of the charge to be made at this time. The rule also provides for closed sessions if the matter "will tend ... to disgrace or injure the professional standing of any individual."

Third, if the committee decides to make a referral, the resolution need not state the committee's belief about the witness's lack of candor, but there should be a formal recorded committee vote. One approach would be simply to have a motion made and seconded to "authorize the chairman, on behalf of the committee, to transmit the testimony of Evan Hultman at the hearing before the Subcommittee on Improvements in Judicial Machinery on December 11, 1980, to the Department of Justice." Based on such a resolution, Senator Thurmond, as chairman of the Judiciary Committee, could send the testimony to the Attorney General with a short transmittal letter. Such a procedure, or one like it, appears to have been used in the past, and we are not aware of any statutory requirement for any more formal procedure.

Fourth, the committee might consider an alternative to referral, such as a committee report on the hearing. A referral of testimony for consideration of possible perjury charges is a serious matter, particularly when it involves a high government official who conducted a sensitive investigation and then appeared before a Senate subcommittee. It will be assumed by the Department of Justice, and by the public, if the matter is ever disclosed, that the Committee on the Judiciary gave careful attention to the details of the charges and concluded that there was reason to believe that perjury had been committed.

Our own review of the material as measured against the standards for a perjury prosecution persuades us that the material does not reach the level of knowing falsehood which constitutes perjury. At most, the materials may be read to cast doubt on Mr. Hultman's credibility or the thoroughness of the investigation he conducted; this would not approach the level for a perjury charge. The attached memorandum from an assistant in my office describes the legal requirements of perjury before Congress as applied to Mr. Hultman's testimony.

Please let me know if further discussion of any of these matters would be helpful for you.

encl.

MICHAEL DAVIDSON
COUNSEL
M. ELIZABETH CULBRETH
DEPUTY COUNSEL
PAULA A. SWEENEY
CHARLES TIEFER
ASSISTANT COUNSEL

United States Senate
OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, D.C. 20510

MEMORANDUM

TO: Michael Davidson
Elizabeth Culbreth

FROM: CT Charles Tiefer

DATE: April 2, 1981

RE: Evan Hultman's testimony before the Subcommittee on Improvements in Judicial Machinery

Pursuant to Kim Pearson's request, I have reviewed the case law on perjury and the materials on Evan Hultman's testimony.

1. Legal requirements of perjury before Congress

To indict for perjury before Congress under 18 U.S.C. § 1621, the prosecution must be willing to show that a duly sworn witness "willfully" testified to "any material matter which he does not believe to be true." Focusing on the issues of willfullness and falsity, one court summed up the requirements of proof:

> In perjury cases, there are two essential elements of proof. First, the statements made by the defendant must be proven false. Second, it must be proved that the defendant did not believe those statements to be true.

United States v. Hagarty, 388 F.2d 713, 716 n.2 (7th Cir. 1968).

The courts have been particularly strict about requiring clear untruths as a basis for perjury. In Bronston v. United States, 409 U.S. 352 (1973), the Supreme Court reversed a perjury conviction for a witness who had misled questioners about his Swiss bank accounts by an evasive and unresponsive answer. "[T]he perjury statute is not to be loosely construed, nor the statute invoked simply because a wily witness succeeds in derailing the questioner--so long as the witness speaks the literal truth. The burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry." 409 U.S. at 360.

As a consequence, the successful prosecution for perjury before Congress generally turns on a lie about a simple question of fact. The Watergate defendants were convicted of perjury before the Ervin Committee for giving an account of the cover-up which was flatly contradicted by White House tapes. United States v. Haldeman, 559 F.2d 31, 97-104 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977). Witnesses have been convicted of perjury for lying to investigating committees about where they had bank accounts, Maragon v. United States, 187 F.2d 79 (D.C. Cir. 1950), cert. denied, 341 U.S. 932 (1951), and whether they had encouraged the candidacy of a particular person (which they denied, although they had actually given money for that candidate), Seymour v. United States, 77 F.2d 577, 583 (8th Cir. 1935).

2. Particular items in Evan Hultman's testimony

Kim Pearson has analyzed Hultman's testimony, and has identified sixteen items in which Hultman says something which may be contradicted by documents or other evidence. Each item consists of an excerpt from Hultman's testimony, followed by the contradicting material, with a covering note as to what in the material contradicts the testimony.

A review of the sixteen numbered items shows the following:

Items 1, 7, 8, 9 and 10: Nard and Armour had two trials: one in Sioux City, Iowa, in February, 1971, and one in Pittsburgh, Pa., where a decision was issued in May, 1972. As U.S. Attorney in Iowa, Hultman opened an investigation in 1971 of Nard's charges of perjury in the Sioux City trial. Items 1, 7, 8, 9, and 10 concern Hultman's denials that he investigated anything to do with the Pittsburgh trial. As the documents show, there was investigation of Pittsburgh matters; indeed, after Nard went to the U.S. Attorney in Pittsburgh, an investigation of the Pittsburgh trial was consolidated with the Iowa investigation, under the control of the Iowa U.S. Attorney's office.

However, there are a number of evident excuses for Hultman and hedgings by Hultman on this point: (1) when Hultman was confronted at the Senate hearing with the Justice Department brief showing a consolidated Iowa-Pittsburgh investigation, he did not dispute it; he explained that his subordinate, Mr. Kirshen, had handled the matter at that point. (Transcript p. 26). (2) Obviously, there was at least some period of time, in 1971, after the Sioux City trial but before the Pittsburgh trial, when Hultman only investigated the Sioux City trial, since that was all that had yet occurred. (3) Hultman blurred his answer by commenting that the trials "might intermesh or the factual problems come together, naturally you would pursue those." (Tr. 21). Taken together, these statements show a number of respects in which Hultman qualified his answer: someone else in his office was involved, different periods of time were involved, there were some overlapping matters.

Items 5, 6, and 11: Hultman said he had presented "everything" to the grand jury and had assisted Nard's presentation to a state agency. Lists of witnesses and other items suggest that his presentations and assistance were limited.

These matters may well go to Hultman's competence. However, there is not a precise factual dispute sufficient for perjury. For example, Hultman did not say falsely "I took Witnesses X, Y and Z" before the grand jury.
On such specific questions he said "I don't recall" (see item 12).

Items 2, 4, and 14: Hultman said he presented the matter to the grand jury as a perjury case. Eight years later, the grand jurors remember being bewildered about what Hultman was doing; they do not recall his presenting it as a perjury matter.

Again, this might go to the competence of Hultman's grand jury work. However, grand jurors who recall being bewildered do not show Hultman to be lying. Bewilderment could show the problems of the case, the grand jurors' uncertainty about the law, the many matters brought before the grand jury, and so on. The grand jury sheets without a vote on indictment also do not flatly contradict Hultman, who only testified the grand jury "did not feel" there was a crime, not that they voted against an indictment.

Items 3, 12, and 13: Hultman remembered a name incompletely and perhaps incorrectly (item 3) and did not recall two witnesses (item 12) or certain conversations with a judge that may or may not have occurred (item 13).

These show poor recollection of matters six or eight years old, not lying. To prove perjury would require evidence that he does recall these matters.

Item 16: Hultman was confident he had not seen a certain letter. The records show the U.S. Attorney's office received the letter, and Hultman returned it, in a collection of 5 cartons of documents, to Nard. Neither record shows Hultman actually saw the letter; he did not initial it, or otherwise use it.

Item 15: Hultman claims that in general he wanted testimony before the grand juries to be recorded. Another U.S. Attorney says Hultman actually resisted having a court reporter in the grand juries. This is an interesting dispute, but it concerns where Hultman stood on a policy question, not a focused factual dispute over some particular grand jury at a particular juncture.

3. Conclusion

Kim Pearson has done a thorough job of matching the testimony and other evidence here, which would support a subcommittee report on the Iowa investigation. The material he has gathered could support a committee finding in the report concerning Hultman's credibility as a witness or perhaps his competence as a prosecutor (if there is other material on the latter point). However, no item seems to approach the kind of flat factual misstatement, made with knowledge of its falsehood, which the law requires for a perjury case. On the contrary, on these points Hultman's various qualifications of his statements, and the nonspecific nature of the questions and answers seem to rule out such a charge.

Senator HATCH. Second, I believe that the letter to Senators Hatch and DeConcini by U.S. Attorney James Reynolds dated August 17, 1981, has been put in the record. If it has not, then I ask that the full letter be put in the record at this point.

Senator DECONCINI. It has been placed in the record.

Senator HATCH. I would read one paragraph and emphasize this paragraph. It is the next to the last paragraph.

> There was never a determination by me or the grand jury that (a) the underlying claims of Mr. Nard of perjury in the two civil cases were true or not.

Keep in mind that we are talking about perjury in the Senate legal counsel. We are talking about the perjury of Mr. Hultman—or potential perjury. Now we are talking about perjury in the *Nard* case that Mr. Hultman was asked to prosecute by Mr. Nard.

Let me read this again—and I might add this relates to Mr. Grassley's statement that Mr. Hultman was exonerated by Mr. Reynolds:

> There was never a determination by me or the grand jury that (a) the underlying claims of Mr. Nard of perjury in the two civil cases were true or not nor (b) that the conduct of the investigation by Mr. Hultman was complete or a proper exercise of prosecutorial discretion.
>
> The quality of the investigation or the prosecutorial discretion by one U.S. Attorney is not reviewable by another U.S. Attorney but only by either the appropriate section of the Justice Department under the Attorney General, the congressional judiciary committees in their oversight capacities, or the appropriate court of law.

Admittedly, he never entered into a judgment whether Mr. Hultman did his job or did not do his job.

I think I would like to stress, before we turn to Mr. Hultman, that the system, if you read and study these materials, has obviously been abused.

There are many political influences in the area of prosecutorial discretion. We are obligated, it seems to me, to inquire into miscarriages of justice. I do not think we could ignore Vesco, Fitzgerald, and the like, including Nard. We cannot dismiss possible abuses by terming our inquiry second-guessing.

We have been trying to look into these areas for several years. Our documents speak for themselves. I do not see how anybody can read this—maybe Mr. Hultman can explain it—but I do not see how anybody can read this and not come to the conclusion that Mr. Nard has been very badly treated and that there has been an abuse here.

I think we have to go forward with our inquiry into our U.S. attorney system to see if it really works and to see if the people really are getting their money's worth.

The same is true of the Justice Department and how they treat these situations and certainly the public integrity section which I think is the most important consideration we have been asked to look into in this whole matter.

I would like to put into the record at this point another letter dated September 24, 1980. This is also a very extensive letter by Mr. Reynolds.

Mr. Reynolds states:

> While in Washington, on November 16, 1977, I met with and explained Mr. Nard's complaints to Michael Egan, then Associate Attorney General, who referred me to Benjamin Civiletti, at that time, head of the criminal division.

Mr. Civiletti was not available, so I met with his assistant, Tim Baker, who referred me finally to Thomas Henderson, the head of the department's Office of Public Integrity.

I think we will find that Mr. Henderson has been an object of investigation since Senator DeConcini was chairman of these inquiries and oversight hearings. That is part of the reason why this investigation is of Mr. Nard as well.

Senator DECONCINI. Without objection, that letter will appear in the record.[1]

The Senator from Iowa.

Senator GRASSLEY. Mr. Chairman, I have three points I would like to make at this time.

One includes an insertion.

If we are going to talk about Mr. Hultman's overall credibility, then I think that means that we have to consider the whole record.

For that purpose, I would like to have for the committee's consideration a statement that Senator Jepsen made on the Senate floor on Friday, July 31, of this year. I would like it inserted in the record.

Senator DECONCINI. I have no objection. Without objection, it is so ordered.

[Statement of Senator Jepsen follows:]

[From the Congressional Record, July 31, 1981]

MAJ. GEN. EVAN L. HULTMAN, A GREAT IOWAN

Mr. JEPSEN. Mr. President, today I take great pleasure in honoring a fellow Iowan who has contributed much to his country. Maj. Gen. Evan L. Hultman, USAR, of Waterloo, Iowa, has recently been elected to the distinguished position of president of the 128,000-member Reserve Officers Association of the United States. General Hultman has given long and dedicated service to his country, State, and community. He is an outstanding leader and his career has been one of great achievement.

Evan Hultman was born July 15, 1925, in Albia, Iowa. He graduated summa cum laude from the University of Iowa with a bachelor of arts degree in political science in 1949. He received his juris doctor degree in law, cum laude, also from that university in 1952.

The general has had a distinguished civilian career. Admitted to the general practice of law in Waterloo in 1952, he did civil and criminal trial work and actual pleading of appeal cases before the Iowa and U.S. Supreme Courts. He was twice elected and served as the attorney general of the State of Iowa and also completed two terms as U.S. attorney in Iowa. General Hultman was twice appointed general legal counsel, U.S. Junior Chamber of Commerce and was elected and served two terms as Black Hawk County attorney.

A former President of the Iowa Federal Bar Association, he also was elected as National Vice President of the Federal Bar Association in 1980. Evan Hultman currently is a practicing trial attorney whose clients include a major industrial city in Iowa.

His military career has been equally illustrious. He entered military service in 1943 as a private in the infantry and rose to captain before his discharge in 1948. After leaving active duty, he jointed the U.S. Army Reserve in 1947.

General Hultman served in a variety of assignments with the 410th Infantry Regiment including Battalion Intelligence Officer, Assistant Operations Officer, Headquarters Commandant, Battalion Executive Officer, and Battalion Commander. He left the regiment in 1959 to become Division Judge Advocate with the 103d Infantry Division until 1964, when he was assigned to the 5040 USAR School as an instructor. In 1973 he became the commanding officer of the 450th Military Intelligence Detachment (Strategic).

In 1974, he was assigned as the Deputy Assistant to the Judge Advocate General for Reserve Affairs at Headquarters Department of the Army, and in 1975 was promoted to brigadier general in the Army Reserve. He assumed command of the 103d Support Brigade in 1976. His unit then was selected by Department of the Army in competition with other Support Brigades to be the only Army Reserve Corps Support Command (COSCOM). After serving as deputy commander of the COSCOM from 1977 to 1979, he was selected as commanding general in 1979 and promoted to major general.

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[1] Not available at press time.

The general has completed numerous military schools, including the Army Command and General Staff College, the Industrial College of the Armed Forces, and the Judge Advocate General School.

Among his awards and decorations are the Meritorious Service Medal with Oak Leaf Cluster; Army Commendation Medal; Army Good Conduct Medal; World War II Victory Medal; American Theatre Ribbon; World War II Occupation Ribbon; Armed Forces Reserve Medal; Asiatic-Pacific Theatre Ribbon; and the Army Reserve Component Achievement Medal.

The general has been an activist in civic affairs throughout his adult life. He served as National Legislative Committeeman of United Cerebral Palsy, chairman of the Iowa Heart Fund, and was three times council president of the Boy Scouts of America. He was awarded the Silver Beaver and the Silver Antelope for this service. Additionally, he is a past president of the Waterloo Junior Chamber of Commerce and vice president of the Iowa Junior Chamber of Commerce.

Evan Hultman also has served ROA in a variety of capacities. He was twice appointed National Resolutions Chairman, is a past president of the Iowa Department, past chairman of the Army Affairs Committee, and National Committeeman. In 1980 he was elected as vice president, Army.

General Hultman is a truly outstanding Iowan and American. His dedicated and meritorious service to his community, State, and Country has proven him highly worthy of his newly elected position as President of the prestigious Reserve Officers Association.

It indeed gives me pleasure to extend my congratulations and my thanks to Evan Hultman for his many years of dedicated service. His has been a life of accomplishment and the Senator from Iowa takes pride in honoring him today.

Senator **Grassley**. Second, I think I need to make it clear that the Senate legal counsel did review the perjury charge. I want to quote the last two sentences from the April 2, 1981, memorandum to Michael Davidson and Elizabeth Culspreth from Charles Tiefer. It states as follows:

> However, no item seems to approach the kind of flat factual misstatement made with knowledge of its falsehood which the law requires for a perjury case. On the contrary, on these points, Hultman's various qualifications of his statement and the nonspecific nature of the questions and answers seem to rule out such a charge.

Then, lastly, I want to make this comment.

Evidently, Senator Hatch got the inference that I was being much broader in my statement about what Mr. Reynolds investigated. I did not intend to be that broad.

I want to quote from the letter what Mr. Reynolds said:

> The investigation of Mr. Nard's complaints was finally completed in June of 1980 in the final session of the Sioux City grand jury. The grand jury had previously indicated in the fall of 1979 that they did not wish to hear any more evidence unless I felt there were additional matters which should be brought to their attention. I did this in June of 1980.
>
> Following that presentation, the grand jury again agreed they wanted to take no further action on Mr. Nard's complaints nor would they recommend any further investigation nor bill of indictment be presented for further discussion or vote.

Senator **DeConcini**. Do you want that inserted?

Senator **Grassley**. I quoted it, so it is not necessary.

Senator **DeConcini**. If you want the whole memo, we will insert that, without objection.

Senator **Grassley**. That is from the same letter that is already inserted.

Senator **DeConcini**. All right.

Is the Senator finished?

Senator GRASSLEY. Yes, I am. Thank you very much, sir.

Senator DECONCINI. Mr. Hultman, we welcome you here. We would like you to introduce your counsel.

Would you please stand and be sworn?

Do you swear the testimony you are about to give this committee is the truth so help you God?

Mr. HULTMAN. I do.

Senator DECONCINI. Mr. Hultman, will you please introduce your counsel?

TESTIMONY OF EVAN HULTMAN, ATTORNEY, HULTMAN & ZIMMERMAN, WATERLOO, IOWA; ACCOMPANIED BY THOMAS S. REAVELY, ATTORNEY, GAMBLE, RIEPE, BURT, WEBSTER & DAVIS, DES MOINES, IOWA

Mr. HULTMAN. I have with me Attorney Thomas Reavely from Des Moines, Iowa.

Senator DECONCINI. Mr. Hultman, do you care to make a statement before we proceed?

Senator HATCH. Could you tell us which law firm you are with, Mr. Reavely?

Mr. REAVELY. Gamble, Riepe, Burt, Webster & Davis in Des Moines.

Senator HATCH. Mr. Reavely, could I ask you one other question?

Mr. REAVELY. Yes.

Senator HATCH. Is it true that your law firm represents the Greyhound Corp.?

Mr. REAVELY. I am not sure, Senator.

The reason I am not sure is that just recently, this last February, I joined the firm. I had my own firm.

Senator HATCH. Are you aware that your law firm has represented the Greyhound Corp.

Mr. REAVELY. Personally, no.

Senator HATCH. Might I point out to you that Martindale Hubbell has the Greyhound Corp. as one of the companies your law firm happens to represent. That happens to be the parent company, the owner of Armour & Co.

It is no reflection on you, Mr. Reavely, but I do think it needs to be brought out in the record at this point.

Many, if not all, of Mr. Nard's charges are against Armour & Co. and against the officials at Greyhound as well.

I just want to bring it out. I am glad you do not know about it.

Mr. REAVELY. Senator, I have never——

Senator HATCH. Armour & Co. is all over the place in this particular matter.

Mr. HULTMAN. Could I respond?

Senator, I want to make absolutely certain, in response to your question of counsel, that I have no knowledge of the kind you are talking about.

Second, I do not think it disqualifies him in any way to come and represent me, any more than your having a legal and business relationship with Mr. Nard.

Senator **Hatch**. Mr. Hultman, I am not suggesting that it does disqualify Mr. Reavely.

What I am suggesting is this:

One of the major problems in this whole thing has been the integrity of Armour & Co., and some think the integrity of Greyhound. I cannot pass judgment on that without asking questions.

I just bring it out because it is a serious problem.

It is not going to comfort Mr. Nard or a number of people who believe in his case that the former U.S. attorney, he claims, did not handle his case correctly, as represented by a law firm that represents Greyhound that owns Armour & Co.

Mr. **Hultman**. Let me make it clear to you that I am not represented——

[Chairman bangs the gavel.]

Senator **DeConcini**. Let the record show that there is no statement here, which I have heard at least, which indicates any disqualification of Mr. Reavely. It is a point that the Senator from Utah has a right to put on the record.

Senator **Hatch**. That is all I am doing.

Senator **DeConcini**. I draw no conclusions from it, Mr. Hultman.

You may proceed with any explanation or opening statement.

Mr. **Hultman**. May I respond further, because I want to make it very clear to the committee and to you, Senator Hatch.

You just stated that I am represented by the firm. I am not represented by the firm. I have known this lawyer personally for many, many years. I have never had a lawyer in my life before. This is my first experience to have him come and sit at the counsel table with me today.

There is no connection of any kind between me and this counsel or any information or knowledge that has anything to do with the firm you just indicated.

Senator **Hatch**. I accept that.

Mr. **Hultman**. I want that to be very clear.

Mr. **Reavely**. May I make a statement for the record, Mr. Chairman?

Senator **DeConcini**. The Senator from Iowa.

Senator **Grassley**. I am going to ask you a question. It may have been what you were going to comment on anyway.

I think for the record at this point, since this has been brought up, that you should just tell us right now: What is your professional and personal relationship with Evan Hultman?

I need to know for my own information whether you have discussed this case with any of your partners in your law firm.

Mr. **Reavely**. I have not specifically discussed this case in great detail with partners in my law firm.

As I stated earlier, up to February 1 of this year I had my own firm of Reavely & Dowell in Mount Pleasant, Iowa. I moved my practice to Des Moines and became a member of the Gamble firm as of February 1.

Naturally, I guess, because I am new in the firm people know what I am doing. I am trying to be assimilated into the workings of a 24-person law firm, which is a little bit different from a 2-man law firm in Mount Pleasant, Iowa.

Senator **Grassley**. Are you a partner in the firm?

Mr. REAVELY. I am not. I am an associate in the firm. Probably the only person I have talked to in any respect in this firm is one partner, Ben Webster.

Senator HATCH. I take it you are both close personal friends?

Mr. HULTMAN. That is correct.

Senator GRASSLEY. I would like to establish, Mr. Reavely, for the record your relationship with Curly. I do not know what your relationship is. I want to know.

Mr. REAVELY. I have known Mr. Hultman for approximately 7 or 8 years. I have never represented him before personally in a matter except at this time.

I have just completed a term as president of the Iowa Chapter of the Federal Bar Association and was elected to be second vice-president of the Federal Bar of the Eighth Circuit.

In fact, I was looking forward to Senator Hatch's breakfast meeting in Denver in September.

I do have connections with Mr. Hultman because of my Federal bar work, because he is a national officer of that organization.

Senator GRASSLEY. Have you ever represented Greyhound?

Mr. REAVELY. No. Myself, personally, I have never represented Greyhound or Armour.

To be honest about it, when I merged my firm with the Gamble-Riepe firm in Des Moines, one of the reasons to merge was because of the workload that I had. I needed some assistance in some technical areas.

I do my own work, representing some insurance companies. I do defense work and corporate work.

Senator HATCH. I have no problem with that. I just thought it should be brought up.

Senator DECONCINI. Mr. Hultman, if you care to make any opening statement, please proceed, sir.

Mr. HULTMAN. If I might, sir.

Senator DeConcini, Senator Hatch, and Senator Grassley, I want you to know that I sincerely appreciate the opportunity to testify again before this Senate subcommittee.

There have been issues raised and questions presented by Senate staff memos, by newspaper articles, and previous committee testimony.

In my only committee appearance on December 11, 1980, which was very clearly on very short notice, without any access to any recorded information of any kind, void of any briefing by you of any specific areas of interest, and with no knowledge of the accusatory reports which had been prepared and in the possession of John Nard and the news media of which I had no knowledge of any kind, I testified. I came here and raised my right hand and testified and did the very best that I could, Senator DeConcini, to respond to your questions.

I testified to events that had happened from 5 to 10 years ago, as I indicated to you at the very outset of my testimony.

Immediately after the December 11, 1980, hearing, I submitted additional information. I made requests for documents and outlined my efforts to comply with your committee request to appear on December 11, as I had, on very short notice.

I would like to relate that, so that you understand what my posture was when I came here on that day.

On Friday, December 5, 1980, while I was out of the State—in fact, I was on the east coast here; not in Washington but on the east coast—my office received notice of a Senate subpena that I appear on Tuesday, December 9, and Thursday, December 11. That is the next Tuesday and the next Thursday.

On late Monday morning when I got back to my office, I received late that morning a letter from you, Senator DeConcini, which stated that I was to testify before your committee on Thursday, December 11, and produce all written documents relating to Mr. Nard which I had in my possession 2 days before the hearing—Tuesday, December 9, at 9:30 a.m.—less than 24 hours from the time I was sitting there at that moment reading your letter on that Monday morning.

I spent Monday morning that day rescheduling my legal responsibilities so I could depart that afternoon as per the subpena instructions. The only way back in Waterloo, Iowa, that I could be here on Tuesday morning was to leave there Monday afternoon.

I had to reschedule a second time after the return phone call. I had called your office and the contact person in your letter was not available. Then I asked if I could talk to somebody else, and I did. They were not familiar with the material or why I was to be here. They said they would call me back.

I had to reschedule a second time after that return phone call came from your office instructing me that if I had no documents, it would not be necessary for me to appear on the 9th, but that I should appear on the 11th.

I then spent what little time I had rescheduling and accomplishing legal matters which had been set for that week.

I have continuously maintained during my testimony and subsequent letters, and I want to make this very clear at the outset here today, that the best record as to events—I know you two gentlemen, as lawyers, and I am sure even the Senator from Iowa, as a nonlawyer, will understand that the best record as to events that were 5 to 10 years ago is not my memory or somebody else's memory. Mine at least is not that good anyway. The best records are contained in the documents themselves.

As I appeared here on that day, I had nothing to refresh me or no recollection—nothing—with reference to this case since the time I left the U.S. attorney's office. All the records of every nature were in the hands of the Department of Justice.

I have repeatedly requested an opportunity to appear again as soon as possible to assist the committee in any and every way possible.

In my December 15, 1980, letter which I prepared immediately when I got back from your hearing, Senator DeConcini, I provided more information. I requested documents and made myself available to assist the committee.

I would like to quote the letter which I wrote on that date:

> Dear Senator DeConcini: I am taking this opportunity to make a brief statement as requested in my phone conversation with one of your assistants on Monday, December 8, 1980, the day I received your letter dated December 3, 1980. I phone to clear up an inconsistency between the subpoena and your letter.

That was whether I was to be here on Tuesday or whether I was to be here on Thursday.

At the outset, it should be understood that I have had no association or familiarity with any persons or files concerning the Nard allegations since the events themselves, nor since the hearing on Thursday, December 11, 1980.

In other words, I had not talked to anybody. Nobody had talked to me, and I had not seen anything.

In trying to refresh my memory during your questions at the hearing and without the aid of any notes, files, memoranda, or anything except my limited memory of general events occurring a number of years ago, I would submit the following additional information concerning specific areas of your questioning:

These were some things that came to mind either after I was here as a witness and later in the day as things went on, or as I went back home.

"1. Questions concerning whether there had been communication with the local judge:

"As I testified, I had no recollection at the time of your question, nor do I now,"——

I do now because I have seen the documents within the last 36 hours.

"Of any oral or written communication. However, in all fairness, the letter showed me during the hearing which was addressed to Judge McManus may well have been brought to my attention by Mr. Nard or the court. I have no independent recollection of any such specifics that many years ago. If, in fact it did come to my attention, it was considered together with all the other information.

"2. Questions concerning the list of names of which I recognized" that day, as you showed me, "only two names:

"Mr. Nard on numerous occasions" and I have now seen that in another report which I received 36 hours ago, "gave my assistants or me lists of names, transcript references, notebooks, and so forth, for various purposes. I do not wish to leave the impression that the handwritten list of names you showed me was not and could not have been given to me or to someone on my staff at some time with a specific request by Mr. Nard. He presented voluminous material and countless requests. I simply have no recollection concerning the specific list other than the two names I mentioned.

"3. Questions concerning consolidation of cases.

The partial pleading you showed me which referred to a consolidation" and that, Senator, I do not know whether you have seen it since or not, but it did not include the last page. It says who it is coming from and who signed it and so forth. That is why I refer to the partial.

". . . was a matter handled by the assistant U.S. attorney responsible for the case at that time"—and it so indicates it right in that particular document—"and who testified at this hearing.

"At this time I have no reason to believe anything different than the testimony given by the assistant U.S. attorney relating to any informal consolidation by the two lawyers." That is as it was set out in the document which you showed me.

I do not recall any specific instructions of formal consolidation; however, all of Mr. Nard's allegations were examined."

Because I did not recall the document and I did not have the full document in front of me, I will say to you very fairly that "I may even have been the signatory on the specific pleading, but I do not recall. It was customary for the U.S. attorney to sign pleadings which had been prepared by an assistant or some agency or department"—I am sure that is the case with you and your staff and members on it—"which had access to the particular information and prepared the pleading for the formal signature of the U.S. attorney. The best source of more complete answers to these questions would be the file information.

4. Questions concerning conclusions by me and the assistants:

"There should be no question that I personally formed tentative conclusions during the course of the investigation that offenses had been committed." That is, those were my personal conclusions.

"If I had not so concluded, I would not have pursued Mr. Nard's allegations to secure the proof necessary to warrant and sustain indictments." I would not go through all that time and effort if I had not had some bases, as I viewed it, from the very beginning for having some kind of proof there to proceed on. "However, the proof, in the final judgment of the grand jury, and every prosecutor, did not sustain his allegations." I understand that other people may come to other conclusions.

"On detailed factual matters, such as the first three above, I have no argument with the specific records. As I stated to you in the hearing," because you were talking about some specific witnesses before grand juries and so forth, "the best record of names and numbers" and you were asking how many witnesses appeared and so forth "of specific witnesses called before the grand jury are the actual records. The same is true on any of the above items. Records made contemporaneously with the events would be far more reliable than one's memory of events, many of which were in the period of 5 to 10 years ago.

"I am requesting a postal return receipt to know that this letter reaches your personal attention."

I might parenthetically say that the reason is that it was during the holiday season. I wanted to make sure that I did get this response to you.

"I would also request that a copy of the staff report referred to by other witnesses"—I was the first witness, if you will recall, and other witnesses came after me—"which has been made available to the press"——

I might parenthetically point out that Jack Nard handed it to the press on that particular day. Yet I had stood here and raised my hand before this committee, and I had no knowledge during the course of my testimony of any such report.

I am going to make an apology to you right now in the record. I became a little upset, and I am away from the letter now, at that point. I will be very frank about it. That was something new for me.

It was the first time I had ever appeared before a committee, and I think maybe it is the first time I ever raised my hand to take an oath at any time.

You made a number of assurances to me in the record that day that you were not looking at me, and you did not doubt me. You said, in fact, that you thought I had been very candid, or words to that effect.

I did my very best to answer as best I could your questions.

Then I found out when I finished that testimony that a little later a witness came here and indicated there were staff reports which accused me of criminal conduct.

I had no chance to either know it or respond to it in any way.

The report was addressed to you and Senator Hatch.

I concluded, and I concluded erroneously as I later found out, and that is why I apologize to you today very clearly. I want it without any question or equivocation. You did not even know the report.

Senator DECONCINI. Let the record show that the report was released that day to the press, as I am advised. I knew that it was released to the press—not by Mr. Nard. It was put on the press table.

I cannot tell you the exact hour and date but prior to the termination of those hearings, that is where the report was.

There was no intent not to give you a copy.

Mr. HULTMAN. I know that, sir.

Senator DECONCINI. We could not supply everyone personally with a copy.

Please proceed.

Senator HATCH. I might add that I was not even at the hearing and did not see the report myself.

Mr. HULTMAN. I just wanted to explain to you the reason why, later in the day, I was very upset. I make it very clear that I was very upset. I apologize.

I had to go on what I knew at that time. I had just raised my hand. I had been assured honesty and fairness by you.

I later heard testimony about reports. Then I found out there were reports that, in effect, said I was guilty of criminal acts.

Later I learned that in the record clearly you had no knowledge of the report.

On page 146 of the testimony that day, you indicated where you got that report and what you were quoting from, and so forth.

In getting the record later and reading it, it became very clear that you had no knowledge. I wanted to make that very clear to you today and apologize to you for anything that I might have said or any inferences of any kind.

REASON FOR APOLOGY

Senator GRASSLEY. What did you say and what are you apologizing for?

Mr. HULTMAN. For the fact that at that particular time newsmen were here and asking questions. I indicated that I felt that it was very unfair that I be brought before the committee. I raised my hand and was given assurances. Yet I was not apprised of reports that were accusatory in nature.

I think as lawyers, as well as nonlawyers, all of us would agree here that would upset anyone.

Senator DECONCINI. The Senator wants to know exactly what he is talking about.

There was an article in the Des Moines Register dated Friday, December 12, 1980, by Mr. James Reiser, and I quote:

> During a hearing recess shortly after he testified, Hultman told reporters he felt that DeConcini had tried improperly to get him to describe what went on in the grand jury. "This is dangerous. This is McCarthyism at its zenith," Hultman shouted. "You can quote me on that."

That is what the reference is, Senator Grassley.

Senator GRASSLEY. You are apologizing, referring to the tactics used in December as McCarthy-type tactics.

Senator DECONCINI. Mr. Hultman, let me assure you that I subscribe to the Sandra O'Connor theory. In this frame of life and work, you must have a short memory and a thick skin. I do not take those things personally at all.

Senator GRASSLEY. Let me insert something in here, because I have had to work with Senator DeConcini and Senator Hatch.

Except for what I have said in my statement and what letters were not responded to, I have found them very friendly and very cooperative with me on this matter.

As I discussed this with them, I have not detected any McCarthy-type tactics in anything they have done, at least in my personal relationship with them.

Senator HATCH. Thank you, Senator. We are as interested in resolving this thing fairly, one way or the other, as possible.

Could I add one other thing?

When you are referring to a report, I think you are referring to the Stockton report that was filed about that time?

Mr. HULTMAN. I think it was. It was one of the two or three reports that I have.

Senator DECONCINI. Mr. Hultman, at this time let me say to you that if I or Senator Hatch or Senator Grassley or anyone else who cares to participate here, in your judgment, is violating rule 6(e) of the Federal Rules of Criminal Procedure or is treating you in any manner that you think Senator McCarthy might have treated you, I would appreciate it if you would say so.

We may disagree.

Mr. HULTMAN. I did at that time, sir, because I was called here on short notice with no files or anything. I raised my hand and got assurances, that you honestly gave to me. Then I learned afterward that there are two reports that charge me with criminal conduct to which I had no knowledge and had no chance to respond. That certainly was not due process, and I am sure you would agree.

I am aplogizing to you, because I know without any question from reading the record later, by your questions of a subsequent witness about that report, that you had no knowledge.

That is why I am retracting, and I want you to know it.

Senator DECONCINI. Thank you, Mr. Hultman.

Let me touch just a minute on the fact of notice.

I would like to clear up a couple of matters, if I could, right here about your last testimony.

Of the five witnesses who appeared before the committee on December 11, they all got the same notice in my judgment. You were the only witness who did not clear your appearance before the Judiciary Committee with the Department of Justice as required under 28 Criminal Rules of Procedure 16.21, nor did you review your files which had been forwarded to the Criminal Division here in Washington, D.C.

I mention this specifically because in a letter from you that you mentioned here to my office, dated June 4, 1981, you stated that you appeared without access to any recorded information.

My question really for the record is: Have you complied with 28 CFR and reviewed your files in preparation for the hearing today? I hope so.

Mr. HULTMAN. Sir, let me say to you that on such short notice—and I am not being critical at this point; I am just stating it as it happened—I have tried to relate to you that I had been out of my office at the time on a Friday when I learned there was a subpena. I came into my office on Monday morning, and I had a week of work ahead of me. As you all know, if you have been gone, you are in a greater crunch.

I did the very best I could during that time to accomplish all of the things that you are referring to, Senator.

The reason that I did not specifically go—I am familiar with that statute and that you go to the U.S. attorney; that is step one—is because the information that was related to the person in my office by the U.S. Marshal was that the U.S. attorney had been subpenaed and would appear and testify with me.

Based upon that, I concluded—and I think fairly and rightly so—that I had the opportunity and would see him once I got here. That is exactly what I did. That is my reason.

As to the present time, yes, I have gone ahead and requested that authorization. That has verbally been given to me by the Department of Justice. It was not given to me but was given to my counsel yesterday verbally. They said that I could so indicate that.

What I was referring to there was an opportunity in the sense that somebody was not depriving me—now we are getting into nuances of language, and I did not mean to infer that—that somebody had deprived me. What I was saying was that I simply had not had the time or opportunity to go look at anything.

Senator DECONCINI. I just want to respond, and I can understand that from being in private practice.

Mr. Alan Kirshen and also U.S. Attorney Reynolds did avail themselves and review those files prior to testimony on the 11th.

Let me ask you: Have you had cooperation from the Justice Department in your request to comply with 28 CFR prior to this hearing?

Mr. HULTMAN. Yes.

Senator DECONCINI. Have you had the access that you and your counsel want?

Mr. HULTMAN. Yes; and I have no complaint about that, sir.

The first thing I received was this big report on Monday noon. It was 71 pages, to which Senator Hatch refers to, and 160 or 170 pages of documents. It is a major effort just to sit down and read that, let alone analyze it and prepare something.

With that, I then went to the Department of Justice. In the 36 hours that were involved—and I am not in any way making excuses or saying anything to you here today—I spent a little less than 2 hours of that very limited amount of time to read it, digest it, and prepare responses, which I have done.

I leafed through a file which is about this size in that little less than 2 hours.

The bottom line is that I have no problem, but I am not going to sit here and say to you that I recognized or had a chance to analyze all of that.

Senator **DeConcini**. Is there any reason you did not look at it before? Did you not feel certain that you would get an additional hearing?

Mr. **Hultman**. As the rest of my prepared remarks will indicate, I had requested it. Finally, through Senator Grassley, I got certain documents, but some of which I still do not have today.

Senator **DeConcini**. From the Department of Justice?

Mr. **Hultman**. No; not from the Department of Justice because the documents were not in the hands of the Department of Justice. They were in the hands of committee staffers.

Senator **DeConcini**. You mean there were no copies left with the Department of Justice? Did you look?

Senator **Hatch**. Are you talking about the work product of the committee staff, Mr. Hultman?

Mr. **Hultman**. No; I do not think I am talking about work product, Senator Hatch.

You and I know that different people have different opinions and look at things differently.

Senator **Hatch**. Let me ask a couple of questions, because I think we need to get into the actual hearing here.

Just so we understand, before the hearing at which you appeared before Senator DeConcini you say that you complied with the rule.

Mr. **Hultman**. Senator Hatch, to the best of my understanding, I complied with the rule.

Senator **Hatch**. You did look at whatever documents the Department of Justice had.

Mr. **Hultman**. No; I did not have an opportunity.

I meant to clear my appearance to be here. That is what I was referring to.

Senator **Hatch**. But you did not look at the documents prior to your first hearing.

Mr. **Hultman**. I did not have time.

Senator **Hatch**. That was my understanding; I just wanted to clear it up.

Mr. **Hultman**. Yes.

Senator **Hatch**. And also give you some help with regard to that, because if you did not look at the documents, that may explain the reason for some of the answers.

No. 2, as I understand it—I think it was back in May when Senators Grassley and Jepsen asked for the consideration of a new hearing—we agreed that would happen.

You have known that we were going to give you a hearing in this matter.

Mr. **Hultman**. Yes.

Senator **Hatch**. When was the first time you availed yourself of the 2½ feet of documents, as you indicated.

Mr. **Hultman**. It was a box.

Senator **Hatch**. Would you say about 2½ feet?

Mr. **Hultman**. Yes.

Senator HATCH. Documents of 2½ feet thick, as indicated by your hands.

When did you first avail yourself of those documents, and when did you first look at them?

Mr. HULTMAN. When I finally found out what it is I should go look for.

It would be an exercise in futility for me to just generally look at a matter or a file as complex and detailed, as you said in your statement earlier, without knowing specifically what it is I am there to go search for.

Senator HATCH. I understand.

Mr. HULTMAN. When I got that information on Monday noon, this report—which is the first report of any kind that I had had or been told what the problems were or what it was I am to testify about—I immediately did. In fact, within the next 2 hours I was there on Monday afternoon.

Senator HATCH. Then the only time you have looked at the Justice Department materials, which you certainly have a right to have access to, was really within the last three days.

Mr. HULTMAN. Since noon Monday.

Senator HATCH. You knew, because I know that Senator Grassley and Senator Jepsen had told you, that Senator DeConcini was certainly concerned—and, as a result, I have been concerned—that there were discrepancies and disparities and serious problems with your earlier testimony. That is the only point I wanted to make.

Yet you felt there was no reason to look at that box until you got these materials. You never tried to.

Mr. HULTMAN. No. For the simple reason that I never knew—and I do not know sitting here today—what the 16 discrepancies are. I read about it in the newspapers; it is the only place I have ever known about it.

Senator HATCH. Mr. Hultman, all I wanted to do is just establish the chronology of that for whatever reason.

I think you are explaining yourself to the best of your ability.

Mr. HULTMAN. I am not making any excuses, and I do not mean that in any way—that I had only looked since on Monday.

Senator DECONCINI. Please proceed, Mr. Hultman.

Mr. HULTMAN. This is my letter of December 15, and some of the things we are now questioning will be answered as we go along.

> I would also request that a copy of the staff report referred to by other witnesses which has been made available to the press be sent to me and a copy of each of the written statements submitted by the other witnesses.

I might interject here that I still have not received it, sitting here in this courtroom today.

> My attendance at your hearing on such short notice required me to do some case shuffling, as I explained to your staff, but I was pleased to do so to assist you and your committee in any way.
>
> I remain available to be of assistance to you and your committee as requested by you during the hearing.
>
> Thank you for your consideration of this information.
>
> Respectfully, Evan L. Hultman.

After my December 15 correspondence, I again set forth my availability in a letter dated April 22, 1981, which states as follows:

Upon returning to my office Monday, December 15, 1980, following your hearing on the previous Thursday, at which you called me as your first witness, I wrote to you in furtherance of your indication that there would be additional hearings; I concluded from your observation that I would be afforded the opportunity to assist the work of the committee on recall.

In my letter, a copy of which I have attached for your reference, I set forth additional information, and renewed my availability to assist.

I have heard nothing in reply but wish to again confirm my willingness to appear and respond.

I did not receive a reply to either letter nor any response to my request for documents.

Again, on June 4, 1981, I specifically requested the opportunity to make myself available and appear before the committee. A copy of this letter was sent to Senator Hatch.

That letter is as follows. It went to Senator DeConcini with a carbon to Senator Hatch.

Since my last letter of April 22, 1981, to you, I have had no response except to learn through the news media you had indicated that it was "possible that the testimony received at the December 11 hearing included inaccuracies, misrepresentations and contradictory testimony by a certain witness." The news reports quoting your letter referred specifically to me.

I want to say to you, gentlemen, that the headlines were not exactly very complimentary.

The impact of the resulting publicity has been devastating to me personally and professionally.

As you well know, I appeared before you personally, on very short notice, without access to any recorded information, void of any briefing by you as to any specific areas of interest, and no knowledge of the accusatory reports which had been prepared and were in the hands of a certain news chain.

In fact, my very first words to you in response to your first question concerning John Nard were:

"Let me preface my remarks by saying we are going back on events that are almost 10 years ago. Therefore, I want you to know that my responses will be to the very best of my recollection. This was only one case in many, many cases that I handled during the period of time. It has no specific significance other than the nature of the case, which I would indicate at the outset in response to your question.

"Sometime in 1971 or 1972 and again I cannot tell you the exact time. . . ."

In other words, I was trying to recall from memory.

Previous to the hearing, I had indicated in my call to you (you were unavailable and staffers took and returned my call) on Monday, December 8, 1980, the day I received your letter dated December 3, 1980, that I had no records to bring forth or assist me and that the most reliable information would be the actual records which were in the Government's possession.

During your questioning, I further tried to make it clear that the actual records would be the best source of information. In my letter to you on the day I returned from the hearing to my office, December 15, 1980 (a copy attached), I again set forth and urged you to rely on specific records rather than my limited memory without the aid of any notes, files, memoranda, or anything except limited memory of general events occurring a number of years ago.

My concluding paragraph clearly summarized my representations to you:

"On detailed factual matters, such as the first three above, I have no argument with the specific records. As I stated to you in the hearing, the best record of names and numbers of specific witnesses called before the grand jury are the actual records. The same is true on any of the above items. Records made contemporaneously with the events would be far more reliable than one's memory of events, many of which were in the period 5 to 10 years ago."

Senator DeConcini, I responded to you on brief notice and answered your questions as forthrightly as humanly possible after a lapse of five to ten years. If there are inaccuracies and contradictions between my testimony and specific documents, I have urged you from the beginning to primarily rely on the records at the time in their proper perspective—not on my limited memory.

In all fairness—but, more specifically, in search of the information you seek—I continue to make myself available and specifically request the opportunity to respond to your concerns.

Again, I received no response to my letter, nor did I receive any documents.

I then sought assistance through Senators Jepsen and Grassley to secure documents and another hearing date before the committee.

I was informed by Senator Grassley's office on short notice from Senator Hatch's office that a hearing would be held on July 29, 1981. Then the date was changed to July 30.

I understand and appreciate how busy and how significant are the things you men are doing. I am not trying to infer that I ought to be given special attention or anything of that kind.

Even though the July 30 hearing date was postponed by Senator Hatch, I appeared in Washington with legal counsel on those dates in an effort to secure a hearing date, which is now here today, and to obtain documents which I had previously requested.

In fact, Senator Hatch, I ran into you on that day. You were in the Capitol. I do not know if you recognized me or not. You were coming out.

Senator HATCH. I did not at the time.

Mr. HULTMAN. On July 31, 1981, a letter outlining in detail the limited documents I had received while in Washington—and this was the first time that I did get any access to the documents, and I do not mean to infer, Senator DeConcini, that somebody was depriving me as far as the Department of Justice is concerned—and those I was requesting were sent by Senator Grassley to Senator Hatch.

I would like to refer to the letter from Senator Grassley to Senator Hatch which was a result of the events that took place while I was here those 2 days.

DEAR ORRIN: As we attempt to wrap things up for the August recess, this seems to be an appropriate time to review the status of the Evan Hultman matter.

Hearing: We last personally discussed the hearing date on July 22nd. At that time you said essentially the date could be at a time convenient with Mr. Hultman. My staff contacted him and found that despite the lack of notice and lack of documentation he still wanted to go along with the July 29, or July 30, date. I wrote you to that effect on July 23.

On that same date, your staff cancelled the July 30 hearing date, citing some continued concern over lack of notice, but expressing primary concern over the burden of your schedule due to your involvement in the conference committee on budget reconciliation.

Mr. Hultman is still anxious for this hearing.

I might parenthetically add that I was being pounded over the head by Jack Nard to newsmen who in turn would call me and by Clark Mollonoff to newsmen who would in turn call me. They were stating that I did not want a hearing. In fact, they stated at that particular time that I had not sent any letters even to you, Senator DeConcini.

I said that just cannot be. One letter, the first one, I have a return receipt for.

Senator DECONCINI. Let me just say that I was not asked by the press or Mr. Mollonoff or Mr. Nard as to whether or not you did send letters.

Mr. **Hultman**. I understand that.

Senator **DeConcini**. My letters were not responded to, based on what I interpreted as your attitude in the remarks that we will have additional hearings in due time. I was not going to get into a duel with you through letters.

Mr. **Hultman**. I understand, sir.

That is not what I was trying to do, but I understand that, sir.

Senator **Hatch**. I might mention that we have all been beaten over the head in this case. As I say, there has been more heat than light and more misunderstanding than there has been understanding.

This hearing should help to put it in focus.

I think our staff has tried to the best of its ability to do it fairly and to document every allegation or charge there is, a number of which, of course, do not pertain to you.

We hope that you will feel that at least an effort has been made to do this fairly.

Mr. **Hultman**. I just want you to know and understand for the benefit of the committee the events as they happened to me to bring me here today. I think that is very important, because that was important, as it has turned out, about the first hearing, of which I am sure, Senator DeConcini, you had no knowledge as to what had happened to me in that very short timeframe.

Senator **Hatch**. Mr. Hultman, may I make a suggestion to you? We can put this whole letter into the record.

We acknowledge that it was received from Senator Grassley.

It would save a lot of time for you and this hearing if we could do it that way. Then you can finish the major part of your statement.

Mr. **Hultman**. What I would then ask to do would be to move on to the second part, which is the response to the document about which you are so concerned and for which you feel so strongly. I think that is of very critical importance after this.

I would like to make the rest of this statement a part of the record.

Senator **DeConcini**. Without objection, it is so ordered.

[Prepared statement and letters from Mr. Hultman follow:]

TESTIMONY OF EVAN HULTMAN BEFORE THE SENATE JUDICIARY COMMITTEE OCTOBER 7, 1981.

I appreciate the opportunity to testify again before this Senate committee. There have been issues raised and questions presented by Senate staff memos, newspaper articles and previous committee testimony.

In my only committee appearance on December 11, 1980, on very short notice, without access to any recorded information, void of any briefing by you of any specific areas of interest, and with no knowledge of the accusatory reports which had been prepared and in the possession of John Nard and the news media, I testified to my best recollection of specific events occurring 5-10 years ago. Immediately after the December 11, 1980 hearing, I submitted additional information, made requests for documents and outlined my efforts to comply with your committee request to appear on December 11th on very short notice. On Friday December 5, 1980, while I was out of the state, my office received notice of a Senate subpoena that I appear on Tuesday, December 9, and Thursday, December 11, 1980. On late Monday morning, December 8, 1980, my office received a letter from Senator DeConcini which stated I was to testify before your committee on Thursday December 11 and produce all written documents relating to Mr. Nard in my possession two days before the hearing; Tuesday December 9 at 9:30 a.m. less than 24 hours from the time my office received Senator DeConcini's letter. I spent Monday morning December 8th, rescheduling my legal responsibilities so I could depart that afternoon as per the subpoena instructions. I had no written documents relating to Nard. I had to reschedule the week a second time after the return phone call from the office of Senator DeConcini instructing me if I had no documents that it wasn't necessary to appear on the 9th but to appear on the 11th for testimony. I then spent what little time I had rescheduling and accomplishing legal matters set for that week. I have continuously maintained during my testimony and subsequent letters, that the best record is that contained in the Department of Justice files rather than my incomplete memory of events 5-10 years before.

I have repeatedly requested an opportunity to appear again as soon as possible to assist the committee in any and every way possible. In my December 15, 1980, letter to Senator DeConcini, I provided more information, requested documents and made myself available to assist the committee.

HULTMAN & ZIMMERMAN
LAW FIRM
SUITE 608, WATERLOO BUILDING
WATERLOO, IOWA 50701

EVAN HULTMAN
CARL B. ZIMMERMAN
ARTHUR A. ZIMMERMAN (1888-1972)
MARJORIE K. PATIN

(319) 234-0339

Dec. 15, 1980

Senator Dennis DeConcini
Committee on the Judiciary
2228 Dirksen Senate Office Building
1st and C Streets
Washington, D. C. 20510

Dear Senator DeConcini:

I am taking this opportunity to make a brief statement as requested in my phone conversation with one of your assistants on Monday, Dec. 8, 1980, the day I received your letter dated Dec. 3, 1980. I phoned to clear up an inconsistency between the subpoena and your letter.

At the outset, it should be understood that I have had no association or familiarity with any persons or files concerning the Nard allegations since the events themselves, nor since the hearing on Thursday, Dec. 11, 1980.

In trying to refresh my memory during your questions at the hearing, and without the aid of any notes, files, memoranda, or anything except limited memory of general events occurring a number of years ago, I would submit the following additional information concerning specific areas of your questioning:

1. Questions concerning whether there had been communication with the local judge:

> As I testified, I had no recollection at the time of your question, nor do I now, of any oral or written communication However, in all fairness, the letter showed me during the hearing which was addressed to Judge McManus, may well have been brought to my attention by Mr. Nard or the Court.

I have no independent recollection of any such specifics that many years ago. If, in fact it did come to my attention, it was considered together with all the other information.

2. Questions concerning the list of names of which I recognized only two names:

Mr. Nard on numerous occasions gave my assistants or me lists of names, transcript references, notebooks, etc., for various purposes. I do not wish to leave the impression that the handwritten list of names you showed me was not and could not have been given to me or to someone on my staff at some time with a specific request by Mr. Nard. He presented voluminous material and countless requests. I simply have no recollection concerning the specific list other than the two names I mentioned.

3. Questions concerning consolidation of cases.

The partial pleading you showed me which referred to a consolidation was a matter handled by the Assistant U. S. Attorney responsible for the case at that time, and who testified at this hearing. At this time I have no reason to believe anything different than the testimony given by the Assistant U. S. Attorney relating to any informal consolidation by the two lawyers. I do not recall any specific instructions of formal consolidation; however, all of Mr. Nard's allegations were examined. I may even have been the signatory on the specific pleading, but I do not recall. It was customary for the U. S. Attorney to sign pleadings which had been prepared by an assistant or some agency or department which had access to the particular information and prepared the pleading for the formal signature of the U. S. Attorney. The best source of more complete answers to these questions would be the file information.

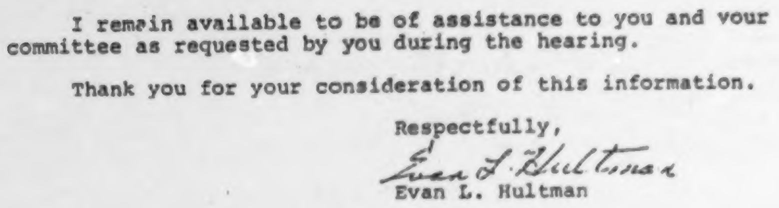
4. Questions concerning conclusions by me and the assistants:

There should be no question that I personally formed tentative conclusions during the course of the investigation that offenses had been committed. If I had not so concluded, I would not have pursued Mr. Nard's allegations to secure the proof necessary to warrant and sustain indictments. However, the proof, in the final judgement of the Grand Jury, and every prosecutor, did not sustain his allegations.

On detailed factual matters, such as the first three above, I have no argument with the specific records. As I stated to you in the hearing, the best record of names and numbers of specific witnesses called before the Grand Jury are the actual records. The same is true on any of the above items. Records made contemporaneously with the events would be far more reliable than one's memory of events, many of which were in the period of five to ten years ago.

I am requesting a postal return receipt to know that this letter reaches your personal attention. I would also request that a copy of the staff report referred to by other witnesses which has been made available to the press be sent to me and a copy of each of the written statements submitted by the other witnesses.

My attendance at your hearing on such short notice required me to do some case shuffling, as I explained to your staff, but I was pleased to do so to assist you and your committee in any way.



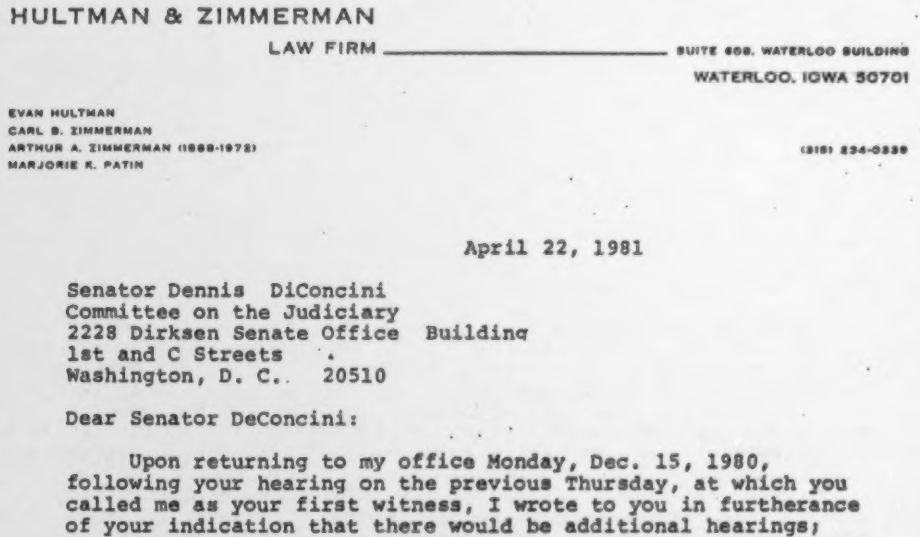
I remain available to be of assistance to you and your committee as requested by you during the hearing.

Thank you for your consideration of this information.

Respectfully,

Evan L. Hultman
Evan L. Hultman

After my December 15, 1980 correspondence, I again set forth my availability in a letter dated April 22, 1981.



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EVAN HULTMAN
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MARJORIE K. PATIN

(319) 234-0339

April 22, 1981

Senator Dennis DiConcini
Committee on the Judiciary
2228 Dirksen Senate Office Building
1st and C Streets
Washington, D. C. 20510

Dear Senator DeConcini:

Upon returning to my office Monday, Dec. 15, 1980, following your hearing on the previous Thursday, at which you called me as your first witness, I wrote to you in furtherance of your indication that there would be additional hearings; I concluded from your observation that I would be afforded the opportunity to assist the work of the Committee on recall.

In my letter, a copy of which I have attached for your reference, I set forth additional information, and renewed my availability to assist.

I have heard nothing in reply, but wish to again confirm my willingness to appear and respond.

Respectully yours,

Evan L. Hultman
Evan L. Hultman

Enc

I did not receive a reply to either letter nor any response to my request for documents.

Again on June 4, 1981, I specifically requested the opportunity to make myself available and appear before the committee. A copy of this letter was sent to Senator Hatch.

HULTMAN & ZIMMERMAN
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WATERLOO, IOWA 50701

EVAN HULTMAN
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ARTHUR A. ZIMMERMAN (1888-1972)
MARJORIE K. PATIN

(319) 234-0339

June 4, 1981

Senator Dennis DeConcini
Committee on the Judiciary
2228 Dirksen Senate Office Building
1st and C Streets
Washington, D. C. 20510

Dear Senator DeConcini:

Since my last letter of April 22, 1981, to you, I have had no response except to learn through the news media you had indicated that it was "possible that the testimony received at the December 11 hearing included inaccuracies, misrepresentations and contradictory testimony by a certain witness." The news reports quoting your letter referred specifically to me. The impact of the resulting publicity has been devastating to me personally and professionally.

As you well know, I appeared before you personally, on very short notice, without access to any recorded information, void of any briefing by you as to any specific areas of interest, and no knowledge of the accusatory reports which had been prepared and were in the hands of a certain news chain.

In fact, my very first words to you in response to your first question concerning John Nard, were:

> "Let me preface my remarks by saying we are going back on events that are almost ten years ago. Therefore, I want you to know that my responses will be to the very best of my recollection. This was only one case in many, many cases that I handled during the period of time. It has no special significance other than the nature of the case, which I would indicate at the outset in response to your question.
>
> Sometime in 1971 or 1972-and again, I can't tell you the exact time . . . "

Previous to the hearing, I had indicated in my call to you (you were unavailable and staffers took and returned my call) on Monday, December 8, 1980, the day I received your letter dated December 3, 1980, that I had no records to bring forth or assist me and that the most reliable information would be the actual records which were in the government's possession.

During your questioning, I further tried to make it clear that the actual records would be the best source of information. In my letter to you on the day I returned from the hearing to my office, December 15, 1980, (a copy attached) I again set forth and urged you to rely on specific records rather than my limited memory "without the aid of any notes, files, memoranda, or anything except limited memory of general events occuring a number of years ago."

My concluding paragraph clearly summarized my representations to you:

> "On detailed factual matters, such as the first three above, I have no argument with the specific records. As I stated to you in the hearing, the best record of names and numbers of specific witnesses called before the Grand Jury are the actual records. The same is true on any of the above items. Records made contemporaneously with the events would be far more reliable than one's memory of events, many of which were in the period five to ten years ago."

Senator DeConcini, I responded to you on brief notice and answered your questions as forthrightly as humanly possible after a lapse of five to ten years. If there are inaccuracies and contradictions between my testimony and specific documents, I have urged you from the beginning to primarily rely on the records at the time in their proper perspective-not on my limited memory!

In all fairness-but more specifically-in search of the information you seek-I continue to make myself available and specifically request the opportunity to respond to your concerns.

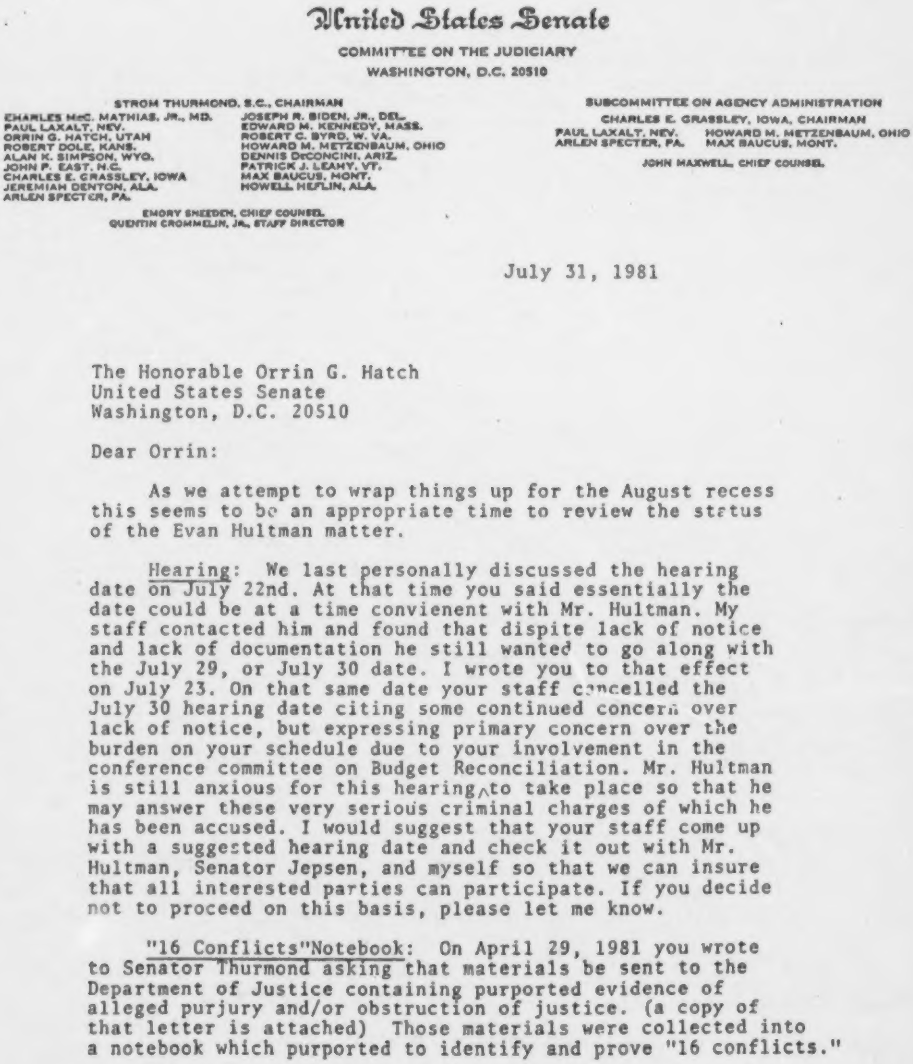
Respectfully,

Evan L. Hultman

Evan L. Hultman

ELH:kf
cc: Senator Orrin G. Hatch
125 Russell Senate Office Building
Washington, D.C. 20510

Again, I received no response to my letter nor did I receive any documents. I then sought assistance through Senators Jepsen and Grassley to secure documents and another hearing date before the committee. I was informed by Senator Grassley's office on short notice from Senator Hatch's office that a hearing would be held on July 29, 1981, then the date was changed to July 30. Even though the July 30 hearing date was postponed by Senator Hatch, I appeared in Washington with legal counsel on those dates in an effort to secure a hearing date and to obtain documents which I had previously requested. On July 31, 1981, a letter outlining in detail the limited documents I had received while in Washington and those I was requesting was sent by Senator Grassley to Senator Hatch.



United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

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JOHN MAXWELL, CHIEF COUNSEL

July 31, 1981

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Orrin:

As we attempt to wrap things up for the August recess this seems to be an appropriate time to review the status of the Evan Hultman matter.

Hearing: We last personally discussed the hearing date on July 22nd. At that time you said essentially the date could be at a time convienent with Mr. Hultman. My staff contacted him and found that dispite lack of notice and lack of documentation he still wanted to go along with the July 29, or July 30 date. I wrote you to that effect on July 23. On that same date your staff cancelled the July 30 hearing date citing some continued concern over lack of notice, but expressing primary concern over the burden on your schedule due to your involvement in the conference committee on Budget Reconciliation. Mr. Hultman is still anxious for this hearing to take place so that he may answer these very serious criminal charges of which he has been accused. I would suggest that your staff come up with a suggested hearing date and check it out with Mr. Hultman, Senator Jepsen, and myself so that we can insure that all interested parties can participate. If you decide not to proceed on this basis, please let me know.

"16 Conflicts"Notebook: On April 29, 1981 you wrote to Senator Thurmond asking that materials be sent to the Department of Justice containing purported evidence of alleged purjury and/or obstruction of justice. (a copy of that letter is attached) Those materials were collected into a notebook which purported to identify and prove "16 conflicts."

That was the document which was available (according to your letter) for inspection from Senator DeConcini's staff member Bob Feidler; which was reviewed by my staff in the Labor Committee Offices; which was sent to, and reviewed by Senator Thurmond's full committee staff; and which was referred to in press accounts of interviews of anonymous staffers. On June 25 I wrote to you requesting a copy of that document, and received no answer. On July 15th I personally asked you for a copy of it and was told I could have it. On July 17th Kim Pearson told my staff it would be copied and given to us that afternoon. Then, stunningly, on July 21st Pearson told my staff that the document "no longer exists." I am not a lawyer but it offends every notion I have of justice, decency and fair play to prepare a document accusing an individual of sixteen instances of criminal activity, ask the Judiciary Committee to send the document to the Justice Department, make the document available for inspection, leak its existence to the press; then, when the accused is finally about to have the opportunity to respond to the charges, the document is suddenly and supposedly "dismanteled" or "destroyed." I am certain that you would agree that this does not appear to be conduct which reflects well upon the Judiciary Committee or its members. Therefore, I once again must request a copy of this "16 Conflicts" notebook; and if it was destroyed, an explanation as to who destroyed it, why, and if and when it will be reconstructed.

DOCUMENTS RECEIVED: I am gratefull for having received the following documents from your staff:

1. The Judiciary Committee files on the Thornburg nomination.
2. The Judiciary Committee files on the Weiss nomination.
3. Copies of thirty-three Secret Service interviews.
4. Copies of Omaha Office FBI reports dated May 13, 1971, November 8, 1971, January 27, 1972, and August 2, 1972.
5. A copy of a Pittsburgh Office FBI report dated October 5, 1971.
6. Copies of "Grand Jury Assignments" for March of 1972; March of 1973; and February, April and August of 1975.

DOCUMENTS REQUESTED: There are other documents relative to this matter which are apparently in the possession of your staff, and I am hereby requesting copies of the following:

1. On page 64 of the Hearing on Oversight of JOJ's Public Integrity Section, (hereinafter referred to as the December 11, 1980 Hearing) reference was made to a transcribed telephone conversation between Hultman and Nard. This transcribed telephone conversation and any other transcribed telephone conversation of Hultman is requested.
2. In Mr. Giuliani's Secret Service interview, he mentions on page 2 interrogatories prepared by the DOJ to Congress on the Nard matter. All responses from DOJ to Committee inquiries for all years in question in regard to Nard are requested.
3. In the Stockton Report dated October 2, 1980, on page 6 in the entry dated "02 May 1975", the statement is made that a Kleinschmidt memo includes two statements by Hultman that allegedly are inconsistent with other evidence. I request a copy of the Kleinschmidt memo and the evidence with which it conflicts or is inconsistent.

4. All DOJ files in regard to Nard and Hultman including all files regarding the Public Integrity Section investigations of Nard and Hultman.
5. All material, including documents, letters or any other form of printed matter, in support of the alleged 16 or 17 inconsistencies in Hultman's December 11, 1980 testimony.
6. All other documents that your staff deems relevant in regards to Hultman.

Other Documents and Information: I would expect that if you or your staff do not have possession of any of the documents enumerated above, but come into possession of them before the hearing, copies of the documents will be provided to me without further request. Furthermore, if you or your staff are aware that any documents do not exist, please acknowledge that it does not exist. And finally I would expect you or your staff would let me know of any documents I have not specifically requested, but which you deem relevant to this case and/or intend to use at the hearing. In other words, Orrin, I would expect that in order to deal with Mr. Hultman fairly and justly there should be no suprises at the hearing.

Thank you for your cooperation.

Sincerely,

Chuck Grassley

Charles E. Grassley
United States Senator

CEG:je

cc: Senator Strom Thurmond

No response to this July 31st request has been received.

As stated above, I was not made aware of your areas of specific inquiries before testifying on December 11, 1980 by the subpoena, letter or telephone conversations. I am still not aware of your specific concerns regarding your areas of interest in the oversight of Justice Department participation in the "Nard matter" in the Northern District of Iowa. I respectfully request the opportunity to supplement this statement on the day of the hearing if in fact I receive any additional documents or reports. Pursuant to Senate rules, this statement was submitted 48 hours prior to the hearing date.

My desire and intention has always been to fully cooperate and assist the committee in any and every way. At no time have I sought to delay my appearance even though the notice in every instance has been extremely short.

Mr. **Hultman**. The first part that I referred to was what I knew coming up to the 48-hour period. That was the nature of the first document. It did not get into any specifics, because until Monday noon I did not get report No. 3 and know the specifics that were concerning you and what I should respond to.

I immediately then went to the Justice Department. I had made arrangements that they would let me see them the minute I got the report.

I did and this is the response I have put together in this time—since getting it on Monday noon.

On October 5, 1981, I received a 71-page staff report.

Senator **Grassley**. Do the members of the committee have a copy of that report?

Mr. **Hultman**. I do not know, Senator.

Senator **Grassley**. If they do not, we ought to have one.

Senator **DeConcini**. Let the record show that the report was to be delivered to each member of this committee.

Senator **Grassley**. I am sorry; I was talking about his response.

Mr. **Hultman**. I am just talking about my response.

Senator **Hatch**. I do not have a copy of that.

Senator **Grassley**. I just got mine about a half hour ago.

Mr. **Hultman**. I just got mine since I have been sitting here. I was up until 4 o'clock trying to get it finished.

Senator **DeConcini**. Please continue, Mr. Hultman.

Mr. **Hultman**. On October 5, 1981, I received a 71-page report, together with all these addendum exhibits, from Senators DeConcini and Hatch concerning John A. Nard.

In my preliminary examination of the document, it is obvious the majority of its contents is directed to matters in Pennsylvania and other individuals over which I had no control and little or not contact.

Pages 7 to 10 deal with Armour contracts.

Pages 10 to 15 raise the issue of expert testimony in the Iowa trial. This issue will be discussed below.

Pages 15 to 20 discuss the Pittsburgh trial, and pages 20 to 28 set out alleged contradictions in the Pennsylvania litigation.

Page 28 to 30 examine the "Nard breach" in Pennsylvania and the "sloppy decision" by Judge Weis.

Pages 30 to 33 discuss further testimony of various witnesses, the Armour breach, and the unsuccessful appeal to the circuit court of appeals which filed a per curiam opinion affirming the trial court.

The appeal court obviously was not convinced of any error, and I am sure Nard had competent counsel to brief and argue all of the alleged contradictions and errors.

Page 33 to 42 are directed toward me, and I will address those issues shortly.

Pages 42 to 47 discuss in detail the rule 60(b) trial in Pennsylvania when Nard attempted to vacate the 1972 judgment because of fraud, misrepresentation, and other misconduct.

Federal district court Judge Snyder found Nard's testimony "singularly unbelievable" and ruled against Nard. Now it is alleged Snyder ignored the evidence, and that Snyder did not understand the evidence.

It is important to note that Snyder is the second Federal district court judge, in addition to the court of appeals, to examine the evidence and find against Nard. Snyder's review was focused on fraud and misrepresentation. Even with misrepresentations and fraud as the central issue, Nard lost.

Senator HATCH. Let me just suggest to you that I do not believe this report on pages 33 to 42 is directed toward you. We believe there is substantial documentation to show that you consolidated both cases and, in fact, have been responsible for both cases in your Iowa proceeding.

I think every page in the report has some reference to both cases. I think you will find that one of the allegations is that they were both under your jurisdiction. I think the documentation shows that.

Mr. HULTMAN. I am indicating the thrust to the very best of my ability. I will respond because of what you are saying, and certainly that is true.

Things were so intertwined, and that is part of the problem.

Senator HATCH. One of the assertions, and I think the documents will show that, is that you actually claimed jurisdiction through your office on both cases.

Let us wait and see what happens.

Mr. HULTMAN. We will get to that.

Senator HATCH. I just wanted you to be aware that is one of the charges, and we will go into that in detail here.

Mr. HULTMAN. All right.

Pages 47 to 50 set out in detail the tax evasion case in Pittsburgh. Alan Kirshen's alleged role in Nard's tax problems is set forth on pages 50 to 52. I will address this issue below.

Pages 52 to 56 also deal with Nard's tax matters not directly affecting my office.

Pages 56 to 63 discuss U.S. Attorney Reynolds' efforts to examine the problem and the position of other Department of Justice officials toward Nard. Any alleged problems Reynolds encountered with other Justice officials have no reflection on my conduct in office or my qualifications to be appointed to a Federal post.

I had nothing to do with those things. I wanted to point that out.

The final pages of the report—pages 63 to 68—focus on my testimony on December 11, 1980, before your committee. I will individually address each issue raised.

The Nard allegations are directed to many Federal officials, including lawyers and judges. The decisions of each lawyer and judge now are being questioned 5 to 10 years later by a convicted felon.

I do not intend to analyze or second-guess attorneys or judges acting on separate matters in other jurisdictions. I will only address the allegations directed toward me and my staff. I think that is what you have indicated.

It is obvious from my examining the report's analysis, conclusions, and accusations that it was not prepared by an attorney. If it was prepared by an attorney, certainly not one experienced and qualified to review complex questions of substantive and procedural law in both civil and criminal Federal courts.

The report indiscriminately uses the phrase "prosecutorial discretion" but does not consider or apply its counterparts—"prosecutorial responsibility" and "prosecutorial ethics".

Terms of art which have special professional meaning such as "perjury, subordination of perjury, and consolidation" are flippantly used without the knowledge and experience of the proper meaning and application of each.

Senator HATCH. Maybe the term "convicted felon" may be flippantly used here also, because there is lots of evidence that Mr. Nard was never convicted. He pled nolo. Second, it is clear that he should never have had any difficulties at all on the tax matter. That is one of the issues.

Mr. HULTMAN. Senator, I am just trying to relate as we sit here what the facts are.

There is no court that has turned aside his pleadings to three different counts on a tax matter.

Senator HATCH. I think that is one of the reasons we are investigating.

Mr. HULTMAN. On page 2, the report states that Nard was found in breach of contract on the basis of testimony that was clearly perjurious. Two district court judges and an appellate court did not find perjury.

The author of the report does not understand the term perjury or the requirements needed to prove perjury beyond a reasonable doubt in a court of law.

Lawsuits are tried because of factual disputes found in testimony and in documents. If there is no dispute, there is no lawsuit.

Differing testimony among witnesses does not indicate perjury on any one witness. It is for the judge in a nonjury trial or a jury in a jury trial to assess the credibility of each witness.

The assessment of credibility is an individual mental process that is a private determination.

Judge Snyder in his ruling on rule 60(b) motion bluntly stated: Nard's testimony was singularly unbelievable.

There are no allegations that Nard committed perjury because the judge did not believe him and stated as he did there.

I will now address each issue directed toward in order as they appear in the report. Except for introductory remarks, the first direct allegations appear on pages 10 to 15 in connection with the testimony of an expert witness in the Iowa trial.

The first grand jury was called to determine whether perjury was committed by a professional engineer testifying on behalf of Armour. The grand jury returned no indictment.

I want to parenthetically say that I hope, Senator DeConcini, there was no misunderstanding because I think the record was clear in the first one that there were never any formal votes taken.

If I left you with that impression, again, I did not intend to. I tried to tell you flat out that there never were any actual votes at all, as far as formal voting.

The grand jury returned no indictments, but the engineer was reprimanded by the engineering board. An expert in a trial is hired for independent professional opinions and conflicts are common among experts.

It is one of the duties of the judge or jury to weigh the testimony of each expert. It is not surprising, even though the testimony may be suspect, that a grand jury would reject a perjury indictment.

If you go to the opinion of Judge McManus, which is one of the exhibits here which the report refers to, you will find that he went way beyond what the report says was stated. He went way beyond and took up the very issue. He did not just dispense with taking it up on its merits because one year had passed under the rules. He went into the very issue itself on its merits.

Judge McManus also passed upon what the evidence was, in terms of perjury or nonperjury as far as this particular witness is concerned.

I do not hear anybody complaining that his decision was goofy or was ill-conceived or anything else.

I think that is very important.

Senator DECONCINI. Mr. Hultman, I am going to permit you to read the entire statement. I think it is proper for you to have an opportunity to respond to the staff report. It is only a report, not a conclusion.

Mr. HULTMAN. I understand, sir.

Senator DECONCINI. It is only a report given to the Senators here to familiarize them with the case.

To be sure that the record is clear, we are not here to try Nard, Armour, or anyone else. The purpose of this hearing, as far as this Senator is concerned, is to review your testimony and permit you to make any explanations of contradictions that were or might have been made for whatever reason on the December 11, 1980, hearing.

That is the only purpose—to permit you to make those explanations and to clarify misinterpretations that might have been made by the media or anyone else. That is the thrust that this Senator is looking for.

In doing that, we have to make reference to Armour. We have to make reference to Pennsylvania and Iowa and to Nard and many of the witnesses.

Please continue.

Mr. HULTMAN. Pages 33 to 42 deal with the grand jury investigations and the decisions made regarding the procedure followed and the witnesses called to testify.

As with most subjective determinations, many factors enter into the final decision and the mental processes are difficult to reconstruct 5 to 10 years later.

To outline each factor influencing the decision is not possible. The decision as to who to call as witnesses in the grand juries shall not be dictated by the demands of any one person.

I think you understand that as a former prosecutor yourself.

Certainly Nard's input was very carefully considered. As I indicated, the key witnesses which he indicated to me and which I and my staff analyzed were the witnesses that were talked to.

There is something also there that is unique which I think you understand as a lawyer. We were not dealing here with witnesses and testimony that we had never seen or heard or knew anything about, as is normally the case. We were dealing with statements that had gone before in great detail in two civil suits with all kinds of appeals and all kinds of depositions and so forth. There was a mass of testimony already under oath.

I think it is very important that you understand that.

Certainly Nard's input was considered. However, the credibility of each witness, the attitude and appearance of each witness, the prospective testimony of each witness, and the nature of the charges are only a few of the factors.

Impressions are made by personal interviews and influence on-the-spot decisions. That is the reason the appellate courts are reluctant in nonjury cases to review the findings of fact of trial judges, because trial judges have eye-to-eye contact and can evaluate witnesses and can assess the total situation as it exists at that time.

My staff and I had to make the same type of subjective decisions as to these grand jury witnesses. The same environment that existed during the grand juries cannot now be reconstructed.

We had prosecutorial responsibility to call witnesses who could be of assistance.

My experience and intuition gained in handling literally thousands of criminal cases, including cases argued before the U.S. Supreme Court, certainly influenced my decision.

The normal procedure was used in the Nard grand juries, as in all other grand juries. I think with no exception, all of those interviews of the grand jurors so indicated.

Allegations are made that the jurors were confused and had no focus on the problem. Again, the author of the report evidently had no prosecutorial experience. The grand juries were investigative grand juries to determine what, if any, crimes were committed. Any criminal law expert understands the role of an investigative grand jury and the purpose for such.

The report alleges, because there was apparently no focus to the grand juries, that it was impossible for the jurors to come to any conclusion that was pro-Nard. The absurdity of this theory is found in the Secret Service reports, some of which are particularly set forth on pages 39 to 42.

Here I want to make a point very clearly. The whole report is filled with "half quotations," "misquotations," and words taken out of context. The most blatant examples are references to the Secret Service interviews which include some grand jurors on pages 39 to 42. "(Actual names of the jurors will be deleted to accommodate due process and as per Department of Justice instructions.)"

The first grand juror referred to was the foreman of a grand jury. The major criticism of referring to the interview is the reference is incomplete—Staff Report Exhibit 28, Hearing Exhibit 17, Hultman Exhibit 1. We all must have thought it was fairly important.

Besides what is quoted in the interview, it is important to note the foreman characterized Nard as a shyster.

The next juror's statement—Staff Report Exhibit 29, Hearing Exhibit 17, Hultman Exhibit 2—and again we are in unanimity as far as that particular juror statement—as set forth in the report could not be more misleading.

The last line quoted is "her impression was the other jurors were bewildered."

However, that is only half of the line. Instead of a period after "bewildered," there should be a comma, as the record clearly shows. The remainder of that sentence is then as follows: "And she stated: I believe they were thinking he was trying to pull something over." Her reference to "he," was to Nard. I think we could conclude that.

The next juror—Staff Report Exhibit 30, Hearing Exhibit 17, and Hultman Exhibit 3—again is only half quoted.

In addition to what is emphasized in the staff report, it is also necessary to know the same juror remarked that "he felt Nard was trying to get something for nothing, and that he had gotten a fair trial earlier." That is what the bottom line of all this is about, at least that is what I have heard. Did he get a fair trial, or didn't he?

The juror also "believed that the jury feeling was generally negative toward Nard."

The "half quotes" continue in the report. The next juror—Staff Report Exhibit 31, Hearing Exhibit 17, Hultman Exhibit 4—in addition to what is stated in the report "characterized Nard as being erratic."

Another grand juror said "most of the jurors had negative feelings toward Nard"—Staff Report Exhibit 32, Hearing Exhibit 17, Hultman Exhibit 5.

The most probing grand juror's testimony which is missing in the staff report is found in Staff Report Exhibit 33, Hearing Exhibit 17, Hultman Exhibit 6.

This grand juror was an engineer. The expert was an engineer. He felt confident in evaluating Nard's testimony. He remembered that Nard had a great many documents, but that they did not prove anything.

The consensus of the jury was that Nard was a crook.

This, again, is coming from the exhibits that the Secret Service went out and got.

The last Secret Service interview in the report was Martha Dolstrum—Staff Report Exhibit 34, Hearing Exhibit 20, and Hultman Exhibit 7.

She was my secretary for a short period of time. I had never known her before, and I do not think I have even seen her since that time. She is a secretary in Des Moines, Iowa, I believe, with the Internal Revenue.

My experienced secretary stated that "she never saw or overheard anything that was improper regarding the handling of the Jack Nard matter."

Again, I think that goes to the ultimate issue that is involved here.

Every grand juror referred to in the staff report views Nard in a negative manner—some going back as far as describing him as a crook and a shyster.

The absence of an indictment or the absence of focus on perjury is not because of the method and the manner of presentation to the jury but because of Nard himself.

The grand jurors came to the same conclusion as the Federal judges, particularly Judge Snyder in a hearing on this very kind of issue.

The jurors would not focus on perjury when Nard himself is not credible. The process of evaluating witnesses is the discretion of each juror.

At this stage of an investigation, prosecutorial responsibility is a major consideration.

My assistant, Alan Kirshen, stated our responsibilities as prosecutors very well in his testimony before your committee on December 11, 1980. To refresh your memory, the following dialog transpired:

> Senator DECONCINI. I can appreciate that.
>
> Mr. KIRSHEN. I looked at the case another way. The question that I had to decide, that I was charged with deciding, was whether not only was there perjury—it is really immaterial to say was there or wasn't there—the problem that I was faced with was, is there something upon which we could indict and obtain a conviction?

That is a very, very basic difference and maybe is a source of our misunderstanding or the direction we are coming from.

> Looking at all of the documents and subsequent developments, my conclusion was that I really could not say whether or not there had been perjury. There were some things that appeared to give the possibility that there may have been perjury but nothing that I could say beyond a reasonable doubt or argue to a jury beyond a reasonable doubt.
>
> Senator DECONCINI. Even a grand jury?
>
> Mr. KIRSHEN. A grand jury or a petty jury. I don't believe it's appropriate to bring an indictment where you can't prove the offense to a conclusion at a trial.
>
> There was nothing there that I felt that I could in good conscience present to a jury, either grand or petty, particularly petty, and obtain a conviction.

I am leaving your dialogue now with Mr. Kirshen, and this is my further answer to the report:

The next area in the staff report directed to my office is the allegations concerning *Nard's Tax* case and the role of my assistant Alan Kirshen. In discussing this area with Kirshen, my office in no way participated in *Nard's Tax* case in Pittsburgh.

I knew nothing at the time, as far as my memory goes. Again, once I had seen the reports in the last 36 hours, there are some indications there that there were some things going back and forth between Mr. Kirshen and somebody else in the Department.

What I am saying to you today, as I said it there to the best of my knowledge, these were things that I was not personally involved in. If I were, I have no recollection of them. I cannot seem to find anything that I was.

If there is something in the record that shows that, again, as I have said to you from the beginning, I will accept whatever the record back there said, rather than what my best memory is.

I understand from Kirshen—and this is just within the very last 24 hours through my counsel—that the decision of main Justice and the direction from main Justice was that any documents obtained in the grand jury investigation in Iowa were to be used solely for the Iowa investigation, and this is important.

Our investigation was to remain independent, and all documents obtained by us were to be used for that sole purpose. I am referring here now to my understanding of just recent vintage from Mr. Kirshen.

I did not advise him not to pay a fine—I am now talking about Mr. Nard—or plead guilty in his tax case. That is absolutely absurd.

In fact, by Mr. Nard's own testimony and documents here, later on we will see that is not what he himself said in his own words later on.

Senator DECONCINI. Mr. Hultman, I would like to point out that the entire report and any exhibits attached to that report will be made part of this record. Everyone will have an opportunity, if they so wish, to read the record.

Senator HATCH. The exhibits do contain everything as far as I can see except for those which were not included.

Mr. HULTMAN. In one of Nard's pleadings in Pennsylvania, he once alleged I advised him to plead guilty to a tax charge. I have heard that and we have seen that on and on here. It has been the source of press reports and so forth.

You will see he later changed his pleading, as you see in my exhibit 9.

My personal notes I found in my file there in the Justice Department, made at the time, clarify this and clearly made this an issue.

What the three things show are:

One, he says, in effect, that I was the one who encouraged him to go make a plea. In other words, I am the source of his plea. I never in any way——

I think you gentlemen would know if there is anything that a prosecuting attorney would never at any time in any way indicate to somebody who is before the court on a criminal charge somewhere else whether he should plea or whether he should not plea.

What happened then as you can see by the next exhibit was that after he had said that to me, that I had, and I emphatically denied it to him right on the spot—in fact, I was astounded that he would make a statement of that kind—he then indicates to me that he has put that in a pleading, which is the exhibit here.

In that pleading, he has made that statement. I said: You know that is a total lie. Then he changed and said: That was my lawyer's idea, or words to that effect.

I said: There is no question about who is the source of this, and I want it cleared right here and now.

Then when the real pleading was filed, it was not filed the way of the pleading which he had handed me and which I made a copy of at that time and for the record, but it was without the statement that I had anything to do with the plea.

I think we can honestly and fairly conclude by Nard's own filing that that was not the case.

Also at that time, I made a notation which I did find in the file in Justice on Monday afternoon. It was so critical and so significant to me for somebody to make an accusation of that kind that I made a notation of what had transpired. Not only did I make a notation but I took him into the grand jury because I wanted to make absolutely certain that there was no question on that particular issue.

I asked him the question before the grand jury, and he very emphatically denied that I had ever had anything to do with that plea in any manner, form, or nature.

By that illustration, I want to indicate to you the way the number of events went through the course of the relationship with Jack Nard. That was only one of a number.

If you would go to the exhibit—and I do not know the number, because it is just coming to mind—of the statement of Martha Dolstrum who I have not talked to or seen—in her interview she relates, I believe, to something about Mr. Hultman being very concerned about some statement that Mr. Nard had made.

That, I am sure, is what she is probably referring to; because I was very upset, and I think you can understand why I was upset.

One of the most vicious statements totally without foundation appears at page 63 of the report.

I hope that everyone in this room will now listen very clearly and analyze very clearly, because this to me is probably, Senator DeConcini, what has been troubling me from the very beginning.

The reliance is to Reynolds' pursuing new grand jury proceedings.

Now I have been the subject, as a result of this report and that statement, of new press releases.

As of yesterday's press releases, I am again being branded out here that there are on-going grand jury investigations. That is clearly what this report implies.

If anybody were to read it, you would come to that very conclusion.

Senator DECONCINI. I would have to disagree with you. I do not think it implies that or had any intention of implying that. There is no grand jury investigation going on. You know it; I know it.

Mr. HULTMAN. I know that, and you know that.

Senator DECONCINI. That report, in my observation, does not say so. It talks about the grand jury investigation of Mr. Reynolds.

We have a disagreement there as to the interpretation.

Mr. HULTMAN. Again, that is not the way it is being portrayed in the minds of the readers who read it and go out there and do the press thing.

Senator HATCH. Maybe I can——

Mr. HULTMAN. I did not read it that way, and I want you to know it. When I read that in the report, I was astounded.

I will tell you how concerned I was, because you can understand the due process problems if that is the case.

On Wednesday morning, I am going to come here again and raise up my hand.

If I am at this particular moment in any way under a grand jury investigation or anything, I think, again, these are matters—I had my counsel call and have made that a part of the record from Mr. Reynolds that is not the case. Thus, I did learn on Tuesday—yesterday afternoon—what you have just told me now.

Senator HATCH. Mr. Hultman, let me just say this.

It is kind of irrelevant whether there is a risk——

Mr. HULTMAN. It is not to my reputation, Senator. It is very relevant.

Senator HATCH. I do not think Mr. Reynolds has ever said that he is conducting a grand jury investigation of you.

He has said, and I have heard him say it, that he is or is going to conduct a grand jury investigation of some of the Armour people that he feels have committed perjury.

Whether he does or does not I do not think is all that relevant to what we are discussing here today, but I can see how you might read that to think they were referring to you.

I do not think anybody has that impression.

Mr. HULTMAN. Let me read it to you, Senator.

Senator HATCH. Let us just accept it that that is the way you interpreted it and that nobody here gives any weight to that.

Mr. HULTMAN. Senator, there is something very, very important here—and even more far-reaching—than just the one statement I have just now made.

That is exactly the same technique.

I am not referring, and I do not want——

Senator HATCH. Mr. Hultman, look. I have just told you that it is written perhaps ambiguously. However, the issue here is not whether there is presently a grand jury going on. The issue is abuse of the prosecutorial function—failure to prosecute diligently and effectively when you have the documents and facts at your disposal and whether or not the Justice Department and the public integrity section did their job.

That is the issue. It is not whether there is going to be a grand jury proceeding in the future or not.

I do not know what Mr. Reynolds is going to do. Assuming you are finally confirmed as a U.S. attorney, I do not know what you will do. I presume you will not do anything about this.

The fact is, we have never interpreted that language to mean that there is a grand jury proceeding against you going on right now or even an attempt.

Mr. HULTMAN. I understand what you are saying.

Senator HATCH. Let us just clear the record. You have made your point on that.

Mr. HULTMAN. No; I have not made the points yet. There are two more steps to it that I want the opportunity to make.

Senator HATCH. Surely.

Senator DECONCINI. Please proceed.

Mr. HULTMAN. There are three reports that concern this. I assume all three of these reports to you, Senator Hatch, and to your staff have to do with what the ultimate issue is here. Am I correct in assuming that?

Senator HATCH. I suppose you are.

Mr. HULTMAN. Let me go back to a problem then that Senator DeConcini and I had in the course of the questions and the answers back at the time of the first session here, when only Senator DeConcini was here.

In the report which is of one of the hearings and is set forth then later in the proceedings—I would assume at that time it was what you primarily were basing any conclusions or decisions upon as that was the report at this time—the report again very clearly is based upon an assumption—the same as this report gives a very clear assumption—that there are more grand jury proceedings. Then this report has to do with Hultman primarily. I think we all agree with that—at least that is what it clearly sets forth very early—Hultman and Nard. Very clearly it is Hultman and Nard.

Again, this report says, and pulls itself up by the bootstraps, that the proof of these things here is in the grand jury which is still going on.

These reports—not just the one but both of the two previous reports prior to this—were written at a time which was after the U.S. attorney in Iowa had sent a letter to each of you gentlemen here.

What I have to say now I leave no inference as to the two Senators, and I want to make this very clear.

We are referring to reports and staffers and what is in reports.

I am referring to whoever wrote the report and who had the access without any question.

That is, both of the reports, like this one again—three times—clearly state and leave you with the impression that grand jury events concerning Hultman are still going on when in fact 3 to 4 weeks before——

I assume the staffer had access to those responses because, again, it is noted that I have been in discussion with the U.S. attorney.

The letter 3 to 4 weeks before the reports in both instances from Reynolds said that there is no further grand jury.

That is the exhibit; this is what the conclusions are that have been read here.

Senator HATCH. We read it into evidence.

Mr. HULTMAN. Yes; you read it in evidence, Senator.

What I am saying is that if that is an accident, then it is an accident. If I am going to have to sit here and be held to a standard of some kind for 5 to 10 years ago concerning documents and memory, then I think other people ought to be held to certain standards in comparison to me at a time when they have the reports and the events immediately at their desks or in their possession and are writing a very important point and report concerning things and events as of now, including a letter just 2 to 3 weeks ago from the U.S. attorney in northern Iowa.

I think it is very critical and very important to what is going on here. Again, it shows at best that people can make mistakes—and very serious mistakes—in terms of courts.

Senator HATCH. Let the record show that I do not think either Senator or any staff person intended to imply that there was a grand jury proceeding involving you.

We have the letter, and I put it in the record without even ever thinking that.

Mr. HULTMAN. Again, Senator, I am not referring to you. I am referring to the two reports, and now the third one.

I think that is a very important point to be made.

One is that it impacts on me as a person and my reputation as these reports go to the press.

Senator HATCH. Mr. Hultman, let us understand another thing.

All through these years, when you were handling it, there was always a grand jury being held and an investigation into this.

Since Mr. Reynolds has been handling it, there has always been a grand jury being held and an investigation into this—or going to be held.

That has been said by him, as well as by you.

That may be what the investigators and the people who wrote the report meant by that, and I think properly so.

Mr. HULTMAN. In my judgment that is clearly not what it says, Senator, but I accept what you are saying. Again, I guess that is a difference of opinion.

Senator DECONCINI. Mr. Hultman, I am going to recess this hearing in a few minutes. Do you want to finish your statement?

Mr. HULTMAN. Yes.

Senator HATCH. Why don't you finish your statement so that we can then get to questions. After all, that is the only way we are ever going to resolve this.

We know what your statement is; we knew it before you came.

Mr. HULTMAN. All right.

I indicated to you that Mr. Reynolds had been contacted.

I will next address the specific issues raised on pages 63 to 68 concerning my December 11, 1980, testimony.

The first point raised is when I first became aware of a case in Pennsylvania.

When asked the question, my memory was relating to the grand juries. Since the first grand jury in 1972 concerned only the Iowa trial and focused on the engineer expert witness, I was not relating to any Pittsburgh case.

Without the benefit of records, I was trying to reconstruct exact events which occurred 9 years previously—this particular grand jury.

My memory, Senator DeConcini, was incorrect. There is no question about it. Once I went back and saw the documents, I knew it was incorrect.

What I was trying to focus on that far back is that I was thinking that your question was very specific. My answer is very specific, and my answer is incorrect.

What my set of mind was that I looked at this matter and that, of course, was the way the questioning was going and the responses. What was the focus of the first grand jury and what was the focus of the second grand jury. What was the focus of the third.

In the first grand jury, during that time, my eyesight was clearly on the perjury, as Nard had come to me and stated and as the FBI reports all showed——

Senator DECONCINI. Mr. Hultman, I can appreciate that you might not be able to remember that. Your admitted lapse of memory supports our reasons for submitting this issue to the Office of the Senate Legal Counsel for an independent judgment on the materiality of the inconsistencies.

Thanks to Senator Grassley, this is the time to explain that.

I hold no grudge. I understand you make mistakes. I make them all the time.

If there was an error in your testimony, I think it is important that the present record show the error and the reason for it. If it was intentional, then there are other courses to follow.

Senator HATCH. And we appreciate your candor in admitting that.

Mr. HULTMAN. I appreciate that.

This is by way of no excuse.

If I had the opportunity timewise to go—not because I was deprived of it—and review my records, the answer would clearly have been different. There is no question about it. I would have been better able to relate the specific dates.

Senator HATCH. Mr. Hultman, I hope you never have to go through this again.

In the future, all you have to do is let us know you need more time. This committee has never failed to give people reasonable time.

Mr. HULTMAN. Again, I am not being critical there, Senator. It is the way the flow of events took place.

The second issue is one of consolidation. Consolidation is a term of art in the legal profession—it is to me anyway. I did not decide to consolidate. After reviewing all of the documents, I still do not see any documents reflecting that I personally made a decision to consolidate.

My former testimony on December 11, 1980, I think, is correct to the best of my knowledge.

There is reference to consolidation in the report, as you showed it to me at that time. This was discussion as it took place between the two counsels. Very frankly, I was not a party or privy to what that was.

Mr. Kirshen was the key man in phase two. I do not think there was any question about that.

Senator HATCH. You admit that Mr. Kirshen considered it a consolidation?

Mr. HULTMAN. Yes; there is no question about that.

Senator HATCH. He was acting for you?

Mr. HULTMAN. I am not trying in any way by what I am saying here to throw any responsibility anywhere. All I am trying to do is make sure——

Senator HATCH. You can see what I meant when I raised it before—that every page in this report has some bearing on this hearing today—not just that part—whatever it was—and, in particular, because of what happened in your office.

Please proceed.

Senator GRASSLEY. Was Kirshen in your office or in another location?

Mr. HULTMAN. That is one of the problems in the Northern District of Iowa. It is kind of a small town area. It is one-half of the whole State of Iowa.

The court points at that time and the offices were at Sioux City, which is where the main office was. That is at the entire western edge of the State. Then you have Fort Dodge about in the center of the State, about 150 miles to the East. Then you have Waterloo, which is another 100 miles. Then you have Cedar Rapids, which is another 60 miles. Then you have Dubuque, which is about 90 or 100.

Senator DECONCINI. Sounds like Arizona.

Mr. HULTMAN. Mr. Kirshen was located in Sioux City, Iowa, in the western border; and I was located not on the eastern border but part of the eastern at Waterloo—about 225 or 230 miles apart.

Senator HATCH. Who did Mr. Kirshen report to?

Mr. Hultman. He reported actually to Mr. Sikma, because Mr. Sikma was left in charge of Sioux City.

Again, that is not to shed any responsibility on him.

Senator Hatch. Who did Mr. Sikma report to?

Mr. Hultman. He reported to me; there is no question about it. Indirectly, it was one, two, or three lawyers. Part of this time we got down to where it was just Mr. Sikma and I sometimes. At other times we had three members of the staff. Sometimes we had four. All of them were responsible to me.

Senator Hatch. The reason I raise that is that I think Mr. Kirshen leaves a lot to be desired in this matter. You may conclude that as well after reading some of the documents and materials—or re-reading them—and that is why those questions came up.

Mr. Hultman. That Mr. Kirshen was not clear?

Senator Hatch. He leaves a lot to be desired in this whole matter.

Mr. Hultman. I do not think that is for me to comment on at this point. If there are any questions, we will get at it.

The point was that I am responsible, Senator. In no way am I saying that I ever want to leave an impression that I am not.

I was in another office. That leads to some complications.

Senator Hatch. We also understand that individual attorneys within a U.S. attorney's office do have responsibilities.

Mr. Hultman. The way I operated is that he indicated in this testimony to Senator DeConcini—I believe that is the way you ought to operate with only two or three lawyers—a very small staff. You assign them cases, and it is their responsibility. You are out trying cases all the time like they are, and you cannot know everything that is going on.

Senator Hatch. Just on this point, how many attorneys were under your supervision in your district as U.S. attorneys at the time?

Mr. Hultman. It went over a 4-year period. They came and went.

Senator Hatch. What is the greatest number you had and the least number?

Mr. Hultman. I think the highest number we ever had, and I think that is the case yet today, is four.

Senator Hatch. The lowest?

Mr. Hultman. It got down at one time to just Bob Sikma and me.

In fact, it was so bad on one occasion that I was trying a case in Fort Dodge and the judge had to recess so I could go to Cedar Rapids under another judge in the middle of the case to try it and then come back and finish the case I was trying in Fort Dodge, because there were only two of us.

Senator Grassley. How many cases were you handling then?

Mr. Hultman. I do not have any idea of numbers, Senator.

Senator Hatch. I would not imagine Iowa had too many difficulties. [Laughter.]

Mr. Hultman. That is not true, Senator. We have all of the same problems.

Senator Hatch. We all have problems, Mr. Hultman—even in Utah.

Mr. HULTMAN. I think in all fairness the answer to that is that we were understaffed and overloaded all the time.

It is the smallest law office almost that I have ever literally been in, yet the responsibilities in cases and numbers and significance are very, very large.

Senator DECONCINI. Mr. Hultman, I hate to interrupt you. Are you about to finish, or do you want to come back after the recess and finish?

Mr. HULTMAN. I am, sir; let me finish.

The third issue is the focus of the grand juries. This has been discussed very thoroughly above. As reflected in the hearing exhibits and stated in the previous testimony, the focus of my office was perjury and the focus of the grand jurors was blurred by Nard's lack of credibility.

The fourth issue is Nard's proposed witnesses. This allegation as it relates to prosecutorial discretion and prosecutorial responsibility was examined above. Decisions were made by experienced trial attorneys in an environment that cannot be recreated now. The decisions of witness selection were not made in a vacuum.

The fifth issue is Nard's witnesses not delivering the expected testimony. Nard's statements and allegations were suspect throughout the grand jury proceedings, as evidenced by the Secret Service reports which were made by the U.S. attorney at the present time, some of which have been attached as exhibits.

His lack of credibility was a direct result of his testimony and his actions before the grand jurors.

The substantive testimony has been litigation in two civil trials, in numerous appeals, hearings, affidavits, and in depositions.

Also, as to the proposed testimony by the witnesses, many of the witnesses were interviewed by my staff and then a decision was made as to their usefulness in the proceedings.

My statement that Nard's statement and allegations were outrageous, as referred to in the report, was referring to the criminal conspiracy allegations propounded by Nard concerning me and everybody else who has ever had anything literally to do with it.

On page 42 of the staff report, my remarks were proven correct. I would like to read that particular sentence. That is the conclusion that I am now referring to that the staff report, at least as I read it, comes to.

Page 42 of the report states: "No documentary evidence to support Nard's conclusions has been developed, and his case against the Pennsylvania judges and politicians is entirely circumstantial, even though questions have been raised."

Senator HATCH. That is in the materials that were in the report.

Mr. HULTMAN. Yes; that is where we are standing here today, Senator.

Senator DECONCINI. I think it is important that we all understand that the report you have been so critical of is the report that was given us.

We are not here trying to determine the merits of the *Nard* case or the *Armour* case. We are here to grant you an opportunity and to grant us an opportunity to clarify what we considered serious misstatements in the testimony of the 11th.

I think it is important to keep everyone's eye on that ball. If we do not, we are going to get bogged down in exactly what Senator Grassley has objected to of retrying the case.

We are not interested in retrying the case.

Mr. **Hultman**. I understand, but these are serious misstatements by Mr. Nard.

Senator **DeConcini**. In that case, the report just comes to the same conclusion that you and I do. I am not advocating that anyone file any more charges, nor has Senator Hatch ever insisted or been inclined to leave that impression.

Please proceed.

Senator **Hatch**. We are going to leave it up to whoever listens.

Mr. **Hultman**. I am almost finished, and I apologize.

Keller was allegedly Nard's witness. The Secret Service interview clearly shows Keller's attitude to be anti-Nard. In fact, Keller is a critical witness, as Nard told me on more than one occasion.

The sixth issue is the absence of a court reporter. My recollection at this time is witness expense fees are paid from a different budget rather than from the budget of the U.S. attorney.

In other words, I do not have any control on a pot of money from which I decide how much is going to go to witnesses and so forth.

The report there is inaccurate.

Senator **Hatch**. Mr. Hultman, I know a little bit about this case. I have had to refresh my recollection, too.

Mr. Keller was one of the least important of all the witnesses. Literally you would have to admit that.

Mr. **Hultman**. Mr. Hatch, that is not what Mr. Nard has said to me.

Senator **Hatch**. He has said it to me.

Mr. **Hultman**. Again, he says a lot of things to a lot of different people at different times that are clearly antithetical from one time to another time.

I am telling you what he told me. One of your exhibits, in addition, shows it. We will get to that whenever that time comes.

Senator **Hatch**. I had to ask who Keller was. I know he is an engineer.

Mr. **Hultman**. The seventh and final issue is one of assistance to IRS prosecutors. Alan Kirshen was contacted as to this point. Due to the direction of main Justice, it is my understanding now—sitting here today—that the Iowa investigation remained autonomous, and no assistance was given to IRS prosecutors in Pennsylvania concerning Nard.

Two Federal district court judges, an appellate court, and three grand juries have listened to all of the evidence, made independent judgments as to witness credibility, and have made decisions based on personal contact with all the parties.

Prosecutors have responsibility to all parties—I want to make that point very clear; it is not just to Mr. Nard but to everybody he accuses—to be fair and impartial.

My entire staff and I approached the whole Nard matter with a blend of prosecutorial discretion, responsibility, and ethics.

This prepared response to the staff report was made in less than 48 hours. I respectfully reserve the right to supplement my comments after I have had an opportunity to more thoroughly review the report.

That is the end of my statement.

Senator DECONCINI. Thank you.

Mr. Hultman, we are going to recess now until 2 o'clock when we will reconvene.

Thank you.

[Whereupon, at 12:35 p.m., the committee recessed, to reconvene at 2 p.m. the same day.]

[Prepared response follows:]

TO: Judiciary Committee Members

FROM: Evan L. Hultman

DATE: October 7, 1981

RE: Hultman's response to Staff Report on the John A. Nard case by Senators Dennis DeConcini and Orrin Hatch dated October 5, 1981.

On October 5, 1981, I received a seventy-one (71) page staff report from Senators DeConcini and Hatch concerning John A. Nard. In my preliminary examination of the document, it is obvious the majority of its contents is directed to matters in Pennsylvania and other individuals over which I had no control and little or no contact with. Pages 7-10 deal with the Armour contracts. Pages 10-15 raise the issue of expert testimony in the Iowa trial. This issue will be discussed below. Pages 15-20 discuss the Pittsburgh trial and pages 20-28 set out alleged contradictions in the Pennsylvania litigation. Pages 28-30 examine the "Nard breach" in Pennsylvania and the "sloppy decision" by Judge Weis. Pages 30-33 discuss further testimony of various witnesses, the Armour breach and the unsuccessful appeal to the Circuit Court of Appeals filed a "per curiam" opinion affirming the trial court. The appeal court obviously was not convinced of any error and I am sure Nard had competent counsel to brief and argue all of the alleged contradictions and errors.

Pages 33-42 are directed toward me and I will address those issues shortly. Pages 42-47 discuss in detail the Rule 60 (B) trial in Pennsylvania when Nard attempted to vacate the 1972 judgment because of fraud, misrepresentation and other misconduct. Federal district court Judge Snyder found Nard's testimony "Singularly unbelievable" and ruled against Nard. Now it is alleged Snyder ignored the evidence and that Snyder did not understand the evidence. It is important to note Snyder is the second Federal District Court Judge (in addition to the Court of Appeals) to examine the evidence and find against Nard. Snyder's review was focused on fraud and misrepresentation. Even with misrepresentation and fraud as the central issue, Nard lost.

Pages 47-50 set out in detail the tax evasion case in Pittsburgh. Alan Kirshen's alleged role in Nard's tax problems is set forth on pages 50-52. I will address this issue below. Pages 52-56 also deal with Nard's tax matters not directly affecting my office. Pages 56-63 discuss U.S. Attorney Reynold's efforts to examine the problem and the position of other Department of Justice officials-toward Nard. Any alleged problems Reynolds encountered with other Justice officials have no reflection on my conduct in office or my qualifications to be appointed to federal post. The final pages of the report, pages 63-68, focus on my testimony on December 11, 1980 before your committee. I will individually address each issue raised.

The Nard allegations are directed to many federal officials including lawyers and judges. The decisions of each lawyer and judge now are being questioned 5-10 years later by a convicted felon. I do not intend to analyze or "second-guess" attorneys or judges acting on separate matters in other jurisdictions. I will only address allegations directed towards myself and my staff.

It is obvious my examining the report's analysis, conclusions and accusations, it was not prepared by an attorney. If it was prepared by an attorney, certainly not one experienced and qualified to review complex questions of substantive and procedural law in both civil and criminal federal courts. The report indiscriminatingly uses the phrase "prosecutorial discretion" but does not consider or apply its counterparts; "prosecutorial responsibility" and "prosecutorial ethics". Terms of art which have special professional meaning such as "perjury, subordination of perjury" and "consolidation" are flipently used without the knowledge and experience of the proper meaning and application of each. The trite phrase "a little knowledge is a dangerous thing" has its perfect application to this report.

On page 2, the report states that Nard was found in breach of contract on the basis of testimony that was clearly perjurious. Two District Court judges and and appellate court did not find perjury. The author of the report does not understand the term perjury or the requirements needed to prove perjury beyond a reasonable doubt in a court of law. Lawsuits are tried because of factual disputes found in testimony and documents. If there is no dispute, there is no lawsuit. Differing testimony among witnesses does not indicate perjury on any one witness. It is for the judge, in a non-jury trial, or a jury in a jury trial to assess the credibility of each witness. The assessment of credibility is an individual mental process that is a private determination. Judge Snyder in his ruling on the Rule 60 (B) motion, bluntly stated Nard's testimony was "singularly unbelievable." There are no allegation s that Nard committed perjury because the judge did not believe him!

I will now address each issue directed toward in order as they appear in the report. Except for introductory remarks, the first direct allegations appear on pages 10-15 in connection with the testimony of an expert witness in the Iowa trial. The first Grand Jury was called to determine whether perjury was committed by a professional engineer testifying on behalf of Armour. The grand jury returned no indictments but the engineer was repremanded by the engineering board. An expert in a trial is hired for independent professional opinions and conflicts are common among experts. It is one of the duties of the judge or jury to weigh the testimony of each expert. It is not surprising, even though the testimony may be suspect, that a grand jury would reject a perjury indictment.

Pages 33-42 deal with the Grand Jury investigations and the decisions made regarding the procedure followed and the witnesses called to testify.

As with most subjective determinations, many factors enter into the final decision and the mental processes are difficult to reconstruct 5-10 years later. To outline each factor influencing the decision is not possible. The decision as to who to call as witnesses in the Grand Juries shall not be dictated by the demands of any one person. Certainly Nard's input was considered. However, the credibility of each witness, the attitude and appearance of each witness, the prospective testimony of each witness and the nature of the charge are only a few factors. Impressions are made by personal interviews and influence on the spot decisions. That is the reason appellate courts are reluctant in non-jury cases to review the findings of fact of trial judges because trial judges have eye to eye contact and can evaluate witnesses and can assess the total situation as it exists at that time. My staff and I had to make the same type of subjective decisions as to grand jury witnesses. The same environment that existed during the grand juries can not now be reconstructed. We had prosectorial responsibility to call witnesses who could be of some assistance. My experience and intuition gained in handling literally thousands of criminal cases, including cases argued before the U.S. Supreme Court, certainly influenced my decision.

The normal procedure was used in the Nard grand juries as in all other grand juries. Allegations are made that the jurors were confused and had no focus on the problem. Again, the author of the report evidently had no prosecutorial experience. The grand juries were investigative grand juries to determine what, if any, crimes were committed. Any criminal law expert understands the role of an "investigative" grand jury and the purpose for such.

The report alleges because there was apparently no "focus" to the Grand Juries, it was impossible for the jurors to come to any conclusion that was pro-Nard. The absurdity of this theory is found in the secret service reports; some of which are particularly set forth on pages 39-42.

The whole report is filled with "half-quotations," "misquotations" and words taken-out of context. The most blatent examples are references to the secret service interviews which include some grand jurors on pages 39-42 (actual names of the jurors will be deleted to accommodate due process and as per Department of Justice instructions).

The first Grand Juror referred to was the foreman of a grand jury. The major criticism of referring to the interview is the reference is incomplete (Staff Report Exhibit #28, Hearing Exhibit #17, Hultman Exhibit #1). Besides what is quoted in the interview, it is important to note the foreman characterized Nard as a "shyster". The next juror's statement (Staff Report Exhibit #29, Hearing Exhibit #17, Hultman Exhibit #2) as set forth in the report could not be more misleading! The last line quoted is "Her impression was the other jurors were bewildered." However, that is only half of the line. Instead of a period after bewildered, there should be a comma. The remainder of the sentence is as follows: "and she stated, I believe they were thinking he was trying to pull something over." Her reference to "he" was to Nard.

The next juror (Staff Report Exhibit #30, Hearing Exhibit #17, and Hultman Exhibit #3) again is only half-quoted. In addition to what is emphasized in the Staff Report it is also necessary to know the same juror remarked that "he felt Nard was trying to get something for nothing and that he had gotten a fair trial earlier." The juror also "believed that the jury feeling was generally negative toward Nard."

The "half-quotes" continue in the report. The next juror (Staff Report Exhibit #31, Hearing Exhibit #17, Hultman Exhibit #4) in addition to what is stated in the report "characterized Nard as being erratic." Another Grand Juror said "most of the jurors had negative feelings toward Nard"(Staff Report Exhibit #32, Hearing Exhibit #17, Hultman Exhibit #5)

The most probing grand juror's testimony which is missing in the Staff Report is found in Staff Report Exhibit #33, Hearing Exhibit #17, Hultman Exhibit#6. This grand juror was an engineer. He "felt confident in evaluating Nard's testimony. He remembered that Nard had a great many documents but that they did not prove anything." The "concensus of the jury was that Nard was a crook."

The last secret service interview in the report was Martha Dolstrum (Staff Report Exhibit #34, Hearing Exhibit #20, and Hultman Exhibit #7) who was my secretary. My experienced secretary stated that "she never saw or overheard anything that was improper regarding the handling of the Jack Nard matter."

Every grand juror referred to in the Staff Report views Nard in a negative manner; some going as far as describing him as a "crook" and "shyster". The absence of an indictment or an absence of "focus" on perjury is not because of the method and manner of presentation to the jury but because of Nard himself. The grand jurors came to the same conclusion as the federal judges; particularly Judge Snyder. The jurors would not focus on perjury when Nard himself is not credible. The process of evaluating witnesses is the discretion of each juror.

At this stage of an investigation prosecutorial responsibility is a major consideration. My assistant, Alan Kirshen, stated our responsibilities as prosecutors very well in his testimony before your committee on December 11, 1980. To refresh your memory the following dialog transpired:

> Senator DeConcini. I can appreciate that.
>
> Mr. Kirshen. I looked at the case another way. The question that I had to decide, that I was charged with deciding, was whether not only was there perjury--it is really immaterial to say was there or wasn't there--the problem that I was faced with was, is there something upon which we could indict and obtain a conviction?
>
> Looking at all of the documents and subsequent developments, my conclusion was that I really couldn't say whether or not there had been perjury. There were some things that appeared to give the possibility that there may have been perjury, but nothing that I could say beyond a reasonable doubt or argue to a jury beyond a reasonable doubt.
>
> Senator DeConcini. Even a grand jury?
>
> Mr. Kirshen. A grand jury or a petty jury. I don't believe it's appropriate to bring an indictment where you can't prove the offense to a conclusion at a trial.
>
> There was nothing there that I felt that I could in good conscience present to a jury, either grand or petty, particularly petty, and obtain a conviction.

The next area in the Staff Report directed to my office are the allegations concerning Nard's tax case and the role of my assistant Alan Kirshen. In discussing this area with Kirshen, my office in no way participated in Nard's tax case in Pittsburgh. Participation or non-participation was discussed and main Justice was contacted. I understand from Kirshen the decision of main Justice and the direction from main Justice was that any documents obtained in the grand jury investigation in Iowa were to be used solely for the Iowa investigation. Our investigation was to remain independent and all documents obtained by us were to be used for our sole purpose. I did not advise him not to pay a fine or plead guilty in his tax case. In one of Nard's pleadings in Pennsylvania he once alleged I advised him to plead guilty to a tax charge (Hultman Exhibit #8). He later changed his pleading (Hultman Exhibit #9). My personal notes I found in my file, made at the time, clarify this issue (Hultman Exhibit #10).

One of the most vicious statements totally without foundation appears his page 63 of the report. The reference is to Reynolds pursuing"new grand jury proceedings." My legal counsel has contacted Reynolds' office and my counsel will submit to the committee an afffidavit as to his conversations with Reynolds (Hultman Exhibit #11). There are no grand jury proceedings pending or contemplated concerning Nard's allegations or my administration. Statements as the one appearing on page 63 are totally irresponsible and taint a system which prides itself on fairness and due process. I will next address the specific issues raised on pages 63-68 concerning my December 11, 1980 testimony.

The first point raised is when I first became aware f a case in Pennsylvania. When asked the question, my emory was relating to the grand juries. Since the first grand jury in 1972 concerned only the Iowa trial and focused on the engineer expert witness, I was not relating to any Pittsburgh case. Without the benefit of records I was trying to reconstruct exact events which occurred 9 years before. My memory was incorrect. If I had the opportunity to review my records, I would have been better able to relate to specific dates.

The second issue is one of consolidation. Consolidation is a term of art in the legal profession. I did not decide to consolidate and after reviewing all of the documents, I still do not see any documents reflecting that I personally made a decision to consolidate. My former testimony on December 11, 1980, is correct to the best of my knowledge.

The third issue is the focus of the grand juries. This has been discussed very thoroughly above. As reflected in the hearing exhibits, and stated in the previous testimony, the focus of my office was perjury and the focus of the grand jurors was blurred by Nard's lack of credibility.

The fourth issue is Nard's proposed witnesses. This allegation as it relates to prosecutorial discretion and prosecutorial responsibility was examined above. Decisions were made by experienced trial attorneys in an environment that can not be recreated now. The decisions of witness selection were not made in a vacuum.

The fifth issue is Nard's witnesses not delivering the expected testimony. Nard's statements and allegations were suspect throughout the grand jury proceedings as evidenced by the secret service reports, some of which have been attached as exhibits. His lack of credibility was direct result of his testimony and actions before the grand jurors. The substantive testimony had been litigation in two civil trials and numerous appeals, hearings, affidavits, and depositions. Also, as to the proposed testimony of the witnesses, many of the witnesses were interviewed by my staff and then a decision was made as to their usefulness in the proceedings. My statement that Nard's statement and allegations were "outrageous" was referring to the criminal conspiracy allegations propounded by Nard. On page 42 of the Staff Report my remarks were proven correct. Page 42 of the report states "No documentary evidence to support Nard's conclusion has been developed and his case against the Pennsylvania judges and politicians is entirely circumstantial, even though questions have been raised." Keller was allegedly Nard's witness. The secret service interview clearly shows Keller's attitude to be anti-Nard (Hultman Exhibit 12).

The sixth issue is the absence of a court reporter. My recollection at this time is witness expense fees are paid from a different budget rather than from the budget of the U.S. Attorney. I have control only over my own budget.

The seventh and final issue is one of assistance to I.R.S. prosecutors. Alan Kirshen was contacted as to this point. Due to the direction of Main Justice, it is my understanding, the Iowa investigation remained autonomous and no assistance was given to I.R.S. prosecutors in Pennsylvania concerning Nard.

Two federal district court judges, an appellate court and three grand juries have listened to all of the evidence, made independent judgments to witness credibility and have made decisions based on personal contact with all the parties. Prosecutors have responsibility to all parties to be fair and impartial. My entire staff and I approached the whole Nard matter with a blend of prosecutorial discretion, responsibility and ethics.

This prepared response to the Staff Report was made in less than 48 hours. I respectfully reserve the right to supplement my comments after I have had an opportunity to more thoroughly review the report.

AFTERNOON SESSION

Senator **DeConcini** [acting chairman]. The committee will come to order for continuation of the oversight hearings regarding the Office of Political Responsibility in the Department of Justice.

We have heard opening statements from myself, Senator Hatch, and Senator Grassley of Iowa. Mr. Hultman has responded with a lengthy statement detailing his objections, and so forth, with the staff report, and we now will proceed with some questions.

Senator Hatch will be joining us around 2:30. I have to advise Mr. Hultman that we would like to finish these hearings today. I am leaving town on a predetermined schedule at about 3 o'clock. Senator Hatch and certainly Senator Grassley will continue the hearings. I would like to finish them today if possible.

Mr. **Hultman**. I would agree with that, sir.

Senator **DeConcini**. I am sure you would.

Mr. Hultman, I have some questions regarding this. Let me first preface it with, again, as I have reiterated three times now, my questions are going to deal with your statements on the testimony of December 11.

I solicit, and I am sure you will give us, your candid reasons for what we believe were some inaccurate statements. I have no problems with "I forgot," or "I don't know," or what-have-you. What I think is important, is that we attempt to resolve the matter.

Again, I am not here to attempt to try the Nard, Armour, Pennsylvania, or whatever cases. Those are constantly referred to because of the testimony that was given on the 11th and because of the contradictions that at least appeared to this Senator to be contradictions.

The first area that I would like to touch on is this: You testified in the 11th hearings that Mr. Nard made allegations only against a William Bossenberger, an Armour expert witness at the Sioux City trial when he first came to your office.

Mr. Nard contends that, while he first provided to you a transcript of only Bossenberger's Sioux City testimony, he subsequently provided you with court transcripts of other Armour witnesses who he alleged also committed perjury at Sioux City.

The scope of your investigation is material to the committee's understanding of how you handled the Nard allegation way back then.

I would like to refer first to your following statement of December 11, and that is on page 14, lines 11 through 19. I will read them.

Mr. **Hultman**. Pardon me, sir. The one I am looking at does not show testimony on page 14.

Senator **DeConcini**. It is the one you were just handed.

Mr. **Hultman**. I was going from the copy of the hearing that I have, which evidently is different. All right, sir.

Senator **DeConcini**. This is Mr. Hultman's statement now:

> Sometime in 1971 or 1972—and, again, I can't tell you the exact time, but it would have been after Jack Nard completed his case, the trial, in Sioux City, Iowa; it would be in that context—John Nard came to the Office of the U.S. Attorney and there made an allegation that a specific witness had committed perjury in the course of that civil trial. That was his allegation; that was his accusation; and that was the sum total of it. It went no farther than that one single accusation.

I would like to deliver to you what we term "Hearing Exhibit No. 1." We will place the full exhibit in the record at this point, without objection.

[Exhibit No. 1 follows:]

HEARING EXHIBIT #1

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
Omaha, Nebraska

In Reply, Please Refer to File No.

May 1[illegible], 1971

RECEIVED
MAY 18 1971
U. S. [illegible]TORN[illegible]
NO. DIS[illegible]

WILLIAM B[illegible]

FEDERAL BUREAU OF INVESTIGATION

1

Date 2/24/71

Mr. JOHN WARD, Woodcock Road, Sewickley, Pa., telephone 741-8828, interviewed in the Pittsburgh Office, advised that he is in the contracting business. He was awarded contracts by Armour and Company, Chicago, Illinois, to design and construct a 6.5 million dollar meat processing plant in Pittsburgh, Pa., and 2.8 million dollar plant at Sioux City, Iowa.

Steel for the facilities were designed and furnished by the American Bridge Division of the United States Steel Corporation under the supervision of Mr. CLARENCE SCRANTON, who is now located on the sixth floor of the United States Steel Building in Pittsburgh.

Construction at Sioux City commenced in April, 1968, and in November, 1967, at Pittsburgh. By November, 1968, construction was some 15 percent completed at the Sioux City site and late in that month Armour notified WARD that they wished to terminate the Sioux City contract under provision 3A in which it allows for Armour to terminate "without cause" upon written notice to the contractor. A few days later Armour did terminate the contract for "delay in construction." Subsequently, they also terminated the Pittsburgh contract after construction was 85 percent completed. Armour owes WARD $500,000 on the Sioux City contract and $2,500,000 on the Pittsburgh contract.

WARD alleges that the terminations were the culmination of a "strategy" adopted by Armour to induce him to modify the costs of the construction to the benefit of Armour. He would not concede in this regard. After the termination of the Sioux City contract, Armour engaged W. A. Klinger and Company of Sioux City to complete construction. Klinger had been an original bidder on the contract and had bid lower than WARD but the contract was awarded to WARD on the basis of his performance rating. After termination of the Pittsburgh contract, Armour completed the job itself.

WARD was subsequently sued by Armour for $50,000 in a civil suit filed in United States District Court.

On 2/22/71 at Pittsburgh, Pa. File # Pittsburgh 74-105

by SA DENNIS W. PITCHER /djb Date dictated 2/23/71

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Cedar Rapids, Iowa, on the grounds for damages because of delayed construction. Testimony was introduced that if his construction had been completed an unsafe structure would have resulted and would have had to been evacuated for the protection of their employees.

This case, Armour and Company versus JOHN A. WARD, was concluded in early February, 1971, with a verdict in favor of Armour. It is now under appeal.

In the course of the trial, Mr. WILLIAM BOSSENBERGER, a structural engineer from Ames, Iowa, testified in behalf of Armour. Excerpts from his testimony are as follows:

> "Question: Have you examined the calculations of Mr. Scranton on the structural design to determine whether the steel members in the design were adequate and proper?
>
> "Answer: Yes, I have.
>
> "Question: Is the design adequate to support the building?
>
> "Answer: No, it is not."

Further on in the testimony on direct:

> "Question: Whatmight the effect be of this building being under-designed with respect to design, although having too much steel in it?
>
> "Answer: The area I am directly concerned with is the one-story portion. This area, the type of construction and the way the wind loads were applied, or would have to be applied, the connections for the beam to truss connections is not adequate to take the stresses that are in them. This could, in fact, cause a complete failure of the building. If not a complete failure, it could cause things such as wall cracking, opening up of the joints in the panels, roof damage. Many different less serious items.

"Question: Could this have been corrected by use of a proper design?

"Answer: Yes."

WARD stated that BOSSENBERGER's testimony is completely opposed to the actual facts and is perjured testimony to assist Armour in the presentation of its case. He stated that he can produce numerous expert witnesses to completely refute BOSSENBERGER's testimony, principally Mr. SCRANTON of American Bridge and his own architect.

WARD furnished copies of 11 documents which he claims support his position. These are as follows:

1. Armour interoffice memo of November 8, 1968, from one C. B. COX to one R. R. HARTEL referring to the "strategy as laid out." This related to the Pittsburgh operation and ten days later he was sued for breach of contract.

2. Letter of November 21, 1968, from D. E. ZAREMBA, Project Manager for Armour, notifying of immediate termination of the Sioux City contract under provision 3A of the contract.

3. Letter of July 29, 1969, from JAMES E. MC CULLY of Pittsburgh, a subcontractor on both jobs stating that Armour had not paid him for his work but had him meet with them in Sioux City under circumstances indicating that he would be paid if he would be witness for Armour against WARD.

4. Letter of November 22, 1968, from D. E. ZAREMBA again stating the termination of the Sioux City contract was to be under 3A of the contract.

5. Letter of April 22, 1970, to United States District Judge MC MANUS from two engineers and an architect working on the Sioux City job expressing astonishment that Armour is attempting to obtain dismissal of a claim by WARD against them on the grounds of delayed

construction and indicating that they did not believe NARD was responsible for delays that may have occurred. They offered to testify in NARD's behalf.

6. Letter of April 17, 1970, from the Dornfeck Engineering Company, electrical contractor on the Sioux City job relating to delays on the part of Armour in submitting specifications causing delays in electrical designing for the facility.

7. Letter of February 17, 1971, from the court reporter, United States District Court, Cedar Rapids, Iowa, setting out excerpts of testimony of WILLIAM ROSENBERGER in the Armour versus JOHN A. NARD case (previously quoted).

8. Letter of February 18, 1971, to United States District Judge MC MANUS, from D. E. ZAREMBA, former project engineer for Armour (see numbers 2 and 4), currently employed with United States Steel in Pittsburgh, which is as follows:

"In their recent suit against Mr. Nard I was very surprised to learn that Armour & Company had been awarded damages by the jury at Sioux City. In my opinion as the former project manager on the subject project in litigation I stated in my deposition in an answer to a direct question that Mr. Nard did not delay that job and I was surprised at the recent verdict since I felt Armour & Company had no basis for a claim of damage against Mr. Nard for delay of the job when all the mitigating circumstances were brought to light.

"I would like to bring to your attention two points I feel should be emphasized and to which I had personal knowledge. These two points are as follows:

"(1) During one of the negotiations between Armour & Company and Mr. Nard and the attorney representing Three Rivers Company in Pittsburgh prior

"On November 21, 1968, Mr. Raymond F. Goss, the Armour attorney, made a statement regarding possible suit or termination of the Three Rivers contract in Pittsburgh and at the end of that statement ended with the comment that 'and this goes for Sioux City, too.'

"When I found out we were going to sue Mr. Ward in Sioux City, I asked Mr. Goss why we would take such action since we had a without-cause-termination clause in the Sioux City contract and he stated that he was certain Mr. Ward would sue Armour & Company in Pittsburgh and, therefore, he wanted to sue Mr. Ward first in Sioux City and have the case tried there where there would be a more favorable climate than in Pittsburgh. It was also indicated or implied that this removal of the case from Pittsburgh would entail more expense and trouble forMr. Ward.

"(2) In regard to the November 6, 1968, meeting with Armour representatives and Mr. Ward in Sioux City where complaints were voiced by Armour & Company's project engineer and field engineer regarding insufficient manpower on the job, I made the statement that perhaps Mr. Ward was extending himself too much financially and that if Armour had paid him within a reasonable period of time (say, 30 days) he would have been better able to prosecute the job by adding additional construction personnel. As I recall, Mr. Ward started work on April 28 or 29, 1968, and did not receive his first payment until the first part of July, 1968.

"Another aspect of financial difficulties, or one might say embarrassment, to Mr. Ward was that he would tell his subcontractors or suppliers that Armour & Company would pay them directly for their work from funds Armour & Company had on deposit in a certain Sioux City bank. Upon checking with the bank, they would be informed that no such funds were on deposit and would again contact Mr. Ward who in turn would contact me. I, in turn, would tell Mr. Ward that funds should be in the bank according to my understanding of the payment procedures in the contract. Upon checking with Armour & Company's treasury department, I found out that oft times funds "were not on deposit in the bank but only put there a short period of time before actual payments were made. Thus, when Mr. Hurd's new suppliers or subcontractors contacted the bank to verify his statements, funds were usually not on deposit.

"I trust the foregoing will be of some interest with respect to the litigation that has recently taken place in Sioux City on this subject.

"Very truly yours,

"/s/ D. E. Karenke

"Subscribed & sworn to
this 16th day of February, 1971

"William V. Whitman
My commission expires
June 12, 1971."

10. February 19, 1971, telegram from Ward to Mr. GERALD TRAUTMAN, Chairman of the Board, Armour and Company, which is as follows:

"As I assure you are aware, in my present Sioux City litigation with Armour, Armour called an expert witness to the stand in their case against me in Federal Court who said under oath that the building I had designed for Armour in Sioux City was not designed properly and could have 'complete failure.' He emphasized 'complete failure' twice in his sworn testimony. He also stated the connections of the steel were wrong (the Pittsburgh plant has the same kind of connections.)

"In view of the fact that Armour must have known of this very unsafe situation and continues to let the 400 men and women in Sioux City and the 600 in Pittsburgh work in those supposedly unsafe plants where 'complete failure' could being hundreds of tons of steel crashing down, I have notified the federal and state authorities in Pennsylvania and Iowa of your expert's sworn testimony before Judge Edward McManus in Federal Court in Sioux City, Iowa.

"I am ashamed of you and Armour for permitting this danger to jeopardize the lives and limbs of these employees.

"My engineers are at your service to protect the hundreds of innocent people."

11. Copies of pages 4 and 4A of the contract relating to the Sioux City construction covering Article 3A. (Complete copies of described documents are available in file.)

WARD related that on February 19, 1971, that JESS PROSTER, an international officer of the Amalgamated Butchers and Meat Cutters Union, 2800 Sheridan Road, Chicago, Ill., contacted him and advised him that WALTER CLARK, a Vice President of Armour and Company, said that there was nothing to the statements of BOSSENBERGER as to the Sioux City building being unsafe and that it was safe for his people to work in.

WARD stated that the Sioux City job certainly did not go smoothly and that it was running behind schedule but the fact that the job was behind schedule was because of the many change orders made by Armour.

WARD advised that his entire file in the matter will be made available upon request.

ARMOUR

ARMOUR FOODS

TO F. E. Stehlik - 8A DATE 9/23/68

FROM R. R. Hartel - 22

SUBJECT Pittsburgh Construction Contract

Mr. Cox suggested that I propose a mechanism to you for releasing some of the retainage on the Pittsburgh project. Frank, my feelings are simply these:

1. We have had an audit which has brought to light no glaring inconsistencies in either Mr. Zaremba's evaluation of the present job or Three Rivers' financial situation. Based on this audit, it has been proposed that $350,000 be released to Three Rivers.

2. Three Rivers in the form of Mr. Hard has refused to sign any contract amendments. In general, the amendments proposed involve schedule compliance and non-payment of overtime. The non-payment of overtime consideration is already treated in our present contract. A number of things regarding schedule compliance have yet to be resolved, not the least of which are the smokehouses. Mr. Hard states categorically that he will not re-position his present promised schedule.

Based on the foregoing, I would suggest to you that a letter be written that authorizes the release of the retainage that we have agreed upon and also makes it understood that such a release of retainage in no way alters the other provisions of our original contract.

Conversation with Jim Speer discloses his preference for advance progress payments instead of releasing retainage. My personal preference would be to keep our progress payments clean.

COM Letter to State that should contract

Bob memo [illegible] ingenious

ARMOUR FOODS

TO C. B. Cox - 56 DATE 11/8/68

FROM R. R. Hertel - 22

SUBJECT Pittsburgh Request For Advance Payment

This memo is to comply with the requirement of Mr. J. G. Speer for written authorization for an additional payment to Three Rivers on the Pittsburgh Project. The payment requested is $500,000 and such payment falls within the strategy as laid out in the memo from Joe Sweeder to you dated October 22, 1968; a copy of this memo is attached.

It should be pointed out that the present level of money owed to subcontractors has approached $1.2 million. It should also be pointed out that this payment of $500,000 is not tied to specific progress on the job as much as it is for reducing the overall obligation to subcontractors to a level that will maintain their activities on the job. The present governing factor of job progress is involved in the utilization of steam fitters for refrigeration and utilities piping. We have made what appears to be a successful effort to get the plumbing contractor to double-shift work in this area as an effort to expedite the overall job. Unless we can maintain a level of activity on these subcontractors, we cannot predict completion of the job. We will be unable to maintain a level of activity unless we reduce the debt owed to them.

In consultation with our legal counsel, it has been decided that the payment will not be released to Mr. Hard from the bank without his (or his partner's) signature on a statement which assures Armour and the bank that these payments in no way change his original contract. Refusal on his part to sign this statement will indicate that in his mind the original contract is not in existence; in such a case, we will be free to take over operation of the job ourselves. We are prepared to do this at this time if necessary.

Your approval for the release of these funds is requested.

They sue me in pgh off. 10 days ~~to the~~ later for breach of contract.

RRH:cem

APPROVED: ______________
C. D. Cox

cc: L. R. Miller
J. G. Speer
F. E. Stehlik
J. Sweeder ✓

November 21, 1968

Mr. John A. Nard
Woodcock Drive
Sewickley, Pennsylvania 15143

Re: Armour Construction Project,
Sioux City, Iowa

Dear Mr. Nard:

Armour and Company notifies you that effective immediately it is terminating, under Article 3A, the Construction Agreement between John A. Nard and Armour and Company dated September 6, 1968. This termination shall be handled in accordance with the provisions of such Construction Agreement.

Very truly yours,

ARMOUR AND COMPANY

By

ARMOUR

ARMOUR AND COMPANY

401 N. WABASH AVE., CHICAGO, ILL.
MAIL: BOX 9222, CHICAGO, ILL. 60690
AREA CODE 312 · 943-3100

November 22, 1968

Mr. John A. Nard
Woodcock Drive
Sewickley, Pennsylvania

Dear Mr. Nard:

Please contact me with respect to the termination of the Sioux City contract.

Again, we remind you that you are to follow the items of the Contract Documents with respect to termination under Article 3A.

Very truly yours,

ARMOUR AND COMPANY

D. E. Zaremba, Manager
Project Engineering

JAMES E. MCCULLY
1348 FIRWOOD DRIVE
PITTSBURGH
PENNSYLVANIA 15234

JULY. 29, 1969

MR. J.A. NERO
WOODCOCK ROAD
SEWICKLEY, PA.

DEAR JACK,

THIS IS TO INFORM YOU IN WRITING OF SOME DISTURBING EVENTS THAT HAVE HAPPENED TO OUR COMPANY OVER THE LAST SEVERAL MONTHS. I WOULD LIKE TO MAKE YOU AWARE OF SOME OF ~~[illegible]~~ THE THINGS ABOUT THE ARMOUR JOB IN SIOUX CITY, IOWA FIRST.

I WAS TOLD THAT IF I WENT OUT TO SIOUX CITY AND MET WITH THE ARMOUR PEOPLE AND THEIR ATTORNEY I WOULD BE PAID IN FULL, IF PROPER RELEASES OF LIEN FROM MY MATERIAL PEOPLE WERE FURNISHED TO THEM. A TRIP OF THIS TYPE SHOULD HAVE BEEN MADE IN TWO DAYS AT THE MOST. DUE TO THE ATTORNEY FOR ARMOUR'S, I HAD TO STAY FOUR DAYS AND DIDN'T GET ANYTHING SETTLED. MINUTES OF THESE RIDICULOUS MEETINGS ARE ON FILE WITH MY ATTORNEY, MR. ORRIN HATCH, IN PGH.

4/12-

2-

VERY BRIEFLY OUR FIRST MEETING WAS TO GO OVER ALL OF THE RELEASE OF LIEN PAPERS I HAD WITH ME, THESE WERE APPROVED AND ACCEPTED. NEXT WE WENT OVER MY INVOICE WITH SUPPORTING INVOICES FROM MATERIAL SUPPLIERS, THERE WE SOME VERY MINOR CORRECTIONS TO THESE, ALL AGREED TO BY ME. AT THIS POINT I SHOULD HAVE BEEN PAID OFF IN FULL BUT I DID NOT RECEIVE ANY CHECK. OUR SECOND MEETING WAS MORE OF THE SAME FOOLISHNESS, IN ADDITION TO THIS THEY TOOK A STATEMENT AND DIDN'T GET ANY OF IT RIGHT AND DIDN'T PUT DOWN HALF OF WHAT WAS REALLY SAID. I AM RETRACTING ANY AND ALL STATEMENTS MADE AT THESE MEETINGS UNLESS THEY ARE CORRECTED TO INCLUDE ALL THAT I SAID AND IN THE WAY I SAID THEM.

OUR FOURTH MEETING WAS MOST INTERESTING, ARMOUR'S ATTORNEY HAD THREE CHECKS MADE OUT AND LAYING ON THE TABLE. I WAS TOLD THAT IF I ACCEPTED A LETTER THAT HAD SOME FALSE STATEMENTS IN IT I COULD HAVE THE CHECKS AND LEAVE. I HAD BEEN TOLD IN A TELEPHONE CONVERSATION WITH ARMOUR'S ATTORNEY WHAT WOULD BE IN THE LETTER, ORRIN HATCH ADVISED ME TO NOT ACCEPT OR READ THIS LETTER AND TO GET BACK TO HIM RIGHT AWAY. THIS KIND OF APPEARS LIKE BLACKMAIL, OR THE WAY THE MAFIA WORKS, OF COURSE THESE PEOPLE HAVE PROMISED ME MONEY

BEFORE AND HAVE NOT PAID ME SO IT SEEMS LIKE CUSTOMARY PRACTICE WITH THEM.

I FORGET THE EXACT WORDS USED BY D.C. SHULL, BUT AT ONE TIME DURING OUR USELESS MEETINGS HE MENTIONED THAT SINCE I SPENT SOMUCH TIME IN SIOUX CITY, I WAS HIS "STAR WITNESS" AGAINST YOU. IF THIS IS THE WAY HE TREATS ALL OF HIS "STAR WITNESSES" HE WILL LOOSE EVERY CASE.

WHEN THE CHECKS WERE LYING ON THE TABLE SHULL AND HIS ASSISTANT LEFT THE ROOM TO TALK, I SHOULD HAVE GRABBED THE CHECKS (SINCE THEY WERE MADE OUT TO ME) AND LEFT BECAUSE FRANKLY THESE PEOPLE ARE HOLDING UP PAYMENT ON TO MUCH MONEY THAT IS OWED ME. I AM TIRED OF THEM PROMISING TO PAY ME THEN NOT DOING SO.

THE PITTSBURGH JOB IS MUCH THE SAME STORY. IN NOV. 69 I TRIED TO EXPLAIN TO DAN ZAREMBA THAT SINCE WE WERE NOT BEING PAID IN FULL DURING THIS JOB THAT I HAD TO BE PAID A GREATER PORTION OF MY INVOICES OR WOULD HAVE TO SHUT THE JOB DOWN. HE SAID I WAS GOING TO GET PAID FOR WORK IN SIOUX CITY AND I COULD USE PART OF THAT MONEY TO KEEP PITTSBURGH GOING. THIS IS EXACTLY WHAT I DID; THEN ARMOUR'S DID NOT PAY ME. AS YOU KNOW I DON'T HAVE ENOUGH MONEY TO FINANCE ARMOUR & CO. OR ANYBODY ELSE!

AS A MATTER OF FACT I WAS TOLD TO SEND MY NOV. 69 INVOICE DIRECTLY TO ARMOURS AND NOT THRU THREE RIVERS, THEY SAID IT WOULD

BE PROCCESSED QUICKER. THIS TURNED OUT TO BE A JOKE, THEY HAVEN'T PAID IT YET. AT THEIR EXPLAINATION, THEY TOLD ME IF I WOULD GIVE THEM CERTAIN INVOICES THEY WANTED TO SEE I WOULD THEN BE PAID. THE INVOICES THEY WANTED ARE THE ONES YOU TOLD ME TO KEEP SEPERATE THAT COVERED WORK ON YOU'RE PLACE, STEWART SCOTT'S PLACE AND ALSO SOME OF THE ONES FOR WORK YOU HAD DONE TO REPAY THE PEOPLE WHO HAD DONE FAVORS IN CONNECTION WITH THIS JOB,

DURING THESE MEETINGS HERE IN PITTSBURGH, TOM JACKSON TOOK A STATEMENT THAT HE WROTE THE WAY HE WANTED IT TO SOUND. HIS FAVORITE EXPRESSION IS "WOULD YOU SAY", HE HAS A CUTE WAY OF TRYING TO GET YOU TO SAY SOMETHING THEN WRITING IT DOWN THE WAY HE WANTS IT TO SOUND. NEVERTHELESS I HAD TO SIGN THE STATEMENT TO GET SOME MONEY; HOPING THAT I COULD RETRACT IT LATER. IT APPEARED TO ME THAT YOU HAVE TO FIGHT DIRTY PEOPLE THE DIRTY WAY.

I AM BEGINNING TO WONDER HOW STUPID THINGS CAN GET. AFTER ALL OF THE ABOVE WENT ON THEY GAVE ME AN INTERIM CONTRACT (WHICH THEY DREW UP) TO WORK ON THE JOB WHILE I DID SOME ESTIMATING FOR WHAT WAS TO BE MY FINAL CONTRACT TO COMPLETE THE ITEMS OF WORK WE WERE DOING AT THAT TIME. THEY NOT ONLY HAVEN'T PAID ME ON THE BASIS OF THIS INTERIM CONTRACT BUT SAW FIT TO USE MY ESTIMATE TO NEGOITIATE THE CONTRACT THAT THEY TOLD ME I WOULD WITH MY FORMER PARTNER DAN SMITH. REAL NICE PEOPLE I'M DEALING WITH.

TO BAD I DIDN'T GET THIS COMPLETION WORK BECAUSE I UNDERSTAND THEY ARE MAKING CHANGE AFTER CHANGE. THEY APPERANTLY STILL

JAMES E. MCCULLY
1848 FIRWOOD DRIVE
PITTSBURGH
PENNSYLVANIA 15234

.6

DON'T KNOW WHAT THEY WANT. IF THERE IS ANYTHING I JUST LOVE TO DO IS COMPLETE SOMETHING THEN HAVE TO DO IT OVER. I WOULD HAVE BEEN IN THE BUG HOUSE BY NOW. YOU WOULD THINK THAT PEOPLE WHO HAVE BEEN IN BUSINESS OVER 100 YEARS WOULD HAVE SOME IDEA OF WHAT THEY WANTED AND NEEDED AND HOW TO DO IT WITHOUT MAKING SO MANY DAMN CHANGES. DON'T THEY KNOW WHAT THERE DOING?

I WILL TALK TO YOU MORE ABOUT THIS WHEN CAROLINE AND I GET BACK TO PGH. THERE ARE MANY MORE THINGS I WANT TO GO OVER WITH YOU.

Jim

April 22, 1970

Honorable Edward J. McManus
Chief Judge
United States District Court
Federal Courthouse
Cedar Rapids, Iowa

Dear Judge McManus:

We are writing this letter to you because we understand that Armour and Company is advocating a dismissal of Mr. John A. Nard's claim. We cannot imagine why Mr. Nard's claim would be dismissed, nor do we understand the basis on which Armour and Company terminated Mr. Nard's contract and subsequently sued him for delay of work.

Without enumerating the various space changes, basically and briefly, the structure consists of refrigerated spaces and the refrigeration strongly relates to the structural, plumbing and electrical systems of the building.

It is difficult for us to understand then, how Mr. Nard was to erect the building when we as architects and engineers had not completed working drawings. This was because the most important decision, the type of refrigeration units and refrigeration design, was not issued to us by Armour and Company until December 1968, a month after Mr. Nard's agreement with Armour and Company was terminated.

We are all willing to appear and testify in support of the statements that we have made in this letter.

Very truly yours,

Reg. Architect
Iowa Reg No. 126.

Reg Engineer
Iowa Reg No. 577.

February 18, 1971

The Honorable Edward McManus
Federal Court Building
U. S. District Court
Cedar Rapids, Iowa

Dear Sir:

In their recent suit against Mr. Nard I was very surprised to learn that Armour & Company had been awarded damages by the jury at Sioux City. In my opinion as the former project manager on the subject project in litigation I stated in my deposition in an answer to a direct question that Mr. Nard did not delay that job and I was surprised at the recent verdict since I felt Armour & Company had no basis for a claim of damage against Mr. Nard for delay of the job when all the mitigating circumstances were brought to light.

I would like to bring to your attention two points I feel should be emphasized and to which I had personal knowledge. These two points are as follows:

(1) During one of the negotiations between Armour & Company and Mr. Nard and the attorney representing Three Rivers Company in Pittsburgh prior to November 21, 1968, Mr. Raymond W. Gass, the Armour attorney, made a statement regarding possible suit or termination of the Three Rivers contract in Pittsburgh and at the end of that statement ended with the comment that "and this goes for Sioux City, too."

When I found out we were going to sue Mr. Nard in Sioux City, I asked Mr. Gass why we would take such action since we had a without-cause-termination clause in the Sioux City contract and he stated that he was certain Mr. Nard would sue Armour & Company in Pittsburgh and, therefore, he wanted to sue Mr. Nard first in Sioux City and have the case tried there where there would be a more favorable climate than in Pittsburgh. It was also indicated or implied that this removal of the case from Pittsburgh would entail more expense and trouble for Mr. Nard.

(2) In regard to the November 6, 1968 meeting with Armour representatives and Mr. Nard in Sioux City where complaints were voiced by Armour & Company's project engineer and field

engineer regarding insufficient manpower on the job, I made the statement that perhaps Mr. Nard was extending himself too much financially and that if Armour had paid him within a reasonable period of time (say, 30 days) he would have been better able to prosecute the job by adding additional construction personnel. As I recall, Mr. Nard started work on April 28 or 29, 1968 and did not receive his first payment until the first part of July, 1968.

Another aspect of financial difficulties, or one might say embarrassment, to Mr. Nard was that he would tell his subcontractors or suppliers that Armour & Company would pay them directly for their work from funds Armour & Company had on deposit in a certain Sioux City bank. Upon checking with the bank, they would be informed that no such funds were on deposit and would again contact Mr. Nard who in turn would contact me. I, in turn, would tell Mr. Nard that funds should be in the bank according to my understanding of the payment procedures in the contract. Upon checking with Armour & Company's treasury department, I found out that oft times funds were not on deposit in the bank but only put there a short period of time before actual payments were made. Thus, when Mr. Nard's new suppliers or subcontractors contacted the bank to verify his statements, funds were usually not on deposit.

I trust the foregoing will be of some interest with respect to the litigation that has recently taken place in Sioux City on this subject.

Very truly yours,

D. E. Zaremba

D. E. Zaremba

Subscribed & sworn to
this 18th day of February 1971
[illegible] Notary Public
My commission expires
January [illegible] 1971

Tel. on 2/19/75 to:
Mr. Gerald Trautman
Chmn of Bd., Armour & Co., Chicago, Ill.

As I assume you are aware, in my present Sioux City litigation with Armour, Armour called an expert witness to the stand in their case against me in Federal Court who said under oath that the building I had designed for Armour in Sioux City was not designed properly and could have "complete failure." He emphasized "complete failure" twice in his sworn testimony. He also stated the connections of the steel were wrong (the Pittsburgh plant has the same kind of connections.)

In view of the fact that Armour must have known of this very unsafe situation and continues to let the 400 men and women in Sioux City and the 600 in Pittsburgh work in these supposedly unsafe plants where "complete failure" could bring hundreds of tons of steel crashing down, I have notified the federal and state authorities in Pennsylvania and Iowa of your expert's sworn testimony before Judge Edward McManus in Federal Court in Sioux City, Iowa.

I am ashamed of you and Armour for permitting this danger to jeopardize the lives and limbs of these employees.

My engineers are at your service to protect the hundreds of innocent people.

Yours very truly,

John A. Ward

John A. Ward

Contractor to adhere substantially to the cost breakdown noted in Article 5 of Attachment 6, which, in the opinion of Armour, would result in the total cost plus commission exceeding the maximum contract price noted in Article 4 below, shall, without waiver of any other right accruing by reason of such failure, be deemed a "cause" for cancellation of the Contract Documents pursuant to the General Conditions.

ARTICLE 3. TIME OF COMMENCEMENT AND COMPLETION

Contractor's Work to be performed under the Contract Documents shall be commenced on or before the 20th day of May, 1968, and shall be completed for acceptance on or before the 31st day of July, 1969, all in accordance with those provisions of the Contract Documents which govern the progress of Contractor's Work.

ARTICLE 3A. TERMINATION BY ARMOUR

Armour may terminate the Contract at any time, without cause, by the giving of written notice delivered to Contractor, or sent by registered mail to Contractor. After receipt of notice of termination Contractor shall terminate all work under the Contract on the date specified in such notice and shall (1) terminate, at the option of Armour, all orders and subcontracts chargeable to the performance on Contract which may be terminated without costs; (2) terminate and settle, at the option of Armour and subject to approval of Armour, other orders and subcontracts where the cost of settlement will be less than costs which would be incurred were such order and subcontracts to be completed; and (3) transfer to Armour, in accordance

Pertinent Portion of NARD's contract with Armour with Armour's directions, all materials, supplies, work in process, facilities, equipment, machinery or tools acquired by Contractor in connection with the performance hereof and for which Contractor is reimbursed hereunder, and all Drawings, shop drawings, sketches, Specifications and information for use in connection therewith. Contractor shall, if directed by Armour and to the extent stated in the Notice of Termination, do such work as may be necessary to preserve the work in progress and to protect materials, plant and equipment on the Site or in transit thereto.

Upon termination of the Contract without cause in accordance herewith, and upon compliance by Contractor with the provisions of the preceding paragraph, Armour shall pay Contractor in discharge of all obligations under the Contract all costs as defined in Article 4 below incurred by Contractor to date of termination plus fifteen per cent (15%) of such costs. The sum of all amounts paid under this Article shall in no event exceed the maximum Contract Price. Such costs shall be subject to audit by Armour.

ARTICLE 4. CONTRACT PRICE

Armour shall pay to Contractor a total consideration (hereinafter referred to as "Contract Price") of cost to Contractor plus fifteen per cent (15%) of such cost but in no event shall the Contract Price exceed two million, eight hundred thousand dollars ($2,800,000) for the performance of Contractor's Work in the manner and at times established in this Contract.

The term "cost" as used in this Article shall include all reasonable charges and expenses directly connected with Contractor's

WILLIAM BOSSENBERGER

On March 9, 1971, Mr. Evan L. Hultman, United States Attorney, Northern District of Iowa, Waterloo, Iowa, was consulted concerning the civil case involving John Ward versus Armour and Company, Chicago, Illinois, which case was heard in the United States District Court, Northern District of Iowa, at Cedar Rapids, Iowa, by Chief United States District Judge Edward J. McManus in early 1971. Mr. Hultman said he had been contacted by Mr. John Ward, who is a Pittsburgh, Pennsylvania, contractor, and Mr. Ward was to be in Waterloo, Iowa, on March 10, 1971, to discuss this matter personally with Mr. Hultman.

On March 10, 1971, Mr. Hultman stated he met with John Ward, who furnished him with a copy of William Bossenberger's testimony in the civil case trial. Mr. Ward said that Armour and Company had come to the Ward firm in Pennsylvania, asking the firm to build the Armour plant at Sioux City, Iowa. Ward told Hultman that other building contractors had warned him of Armour and Company tactics in such building ventures, which included delaying the contractor by changes in specifications, then charging the contractor with being unable to fulfill his time schedule for completion as originally given. Ward told Hultman that he had built a similar packing plant in Pittsburgh, Pennsylvania, which Armour and Company liked and caused them to contact him about the new Sioux City plant. Ward contended that Bossenberger's testimony during the Cedar Rapids, Iowa, trial could not have been a matter of bad judgment, but believes Bossenberger purposely gave false answers to basic questions to influence the judge and jury against Ward. Hultman said he would like to discuss this matter with the trial judge before making any decision as to further investigation to be conducted on the perjury complaint.

On March 15, 1971, United States Attorney Hultman stated he has been unable to make an appointment with United States District Judge McManus on this matter but hoped to discuss it with him personally within the next two weeks. Hultman also stated he has requested a private engineer examine Bossenberger's testimony to determine if Bossenberger committed perjury or if there is evidence of

WILLIAM BOSSENBERGER

possible subornation of perjury case. United States Attorney Hultman stated he had contacted United States Attorney, Pittsburgh, Pennsylvania, who informed him John Nard had conferred with this United States Attorney concerning further proceedings in Western District of Pennsylvania. United States Attorney, Pittsburgh, indicated he was considering proceeding there on Nard's complaint.

United States Attorney Hultman has been recontacted on March 29, April 5, April 12, and April 20, 1971. On the latter date, Hultman said he had received some additional material from John Nard, which he would utilize in his conversations with United States District Judge McManus. He said he wished to be able to talk in depth with United States District Judge McManus about this matter, and that the judge has not been willing to give him time for such a discussion to date.

On April 23, 1971, United States Attorney Hultman was recontacted but said he had no further information to report, but on April 30, 1971, he advised that he talked by telephone with John Nard at Pittsburgh, Pennsylvania, on April 29, 1971. Nard told Hultman that he would meet with United States Attorney Richard A. Thornburg, Western District of Pennsylvania, Pittsburgh, Pennsylvania, in the near future, at which time Nard would present Thornburg with additional evidence regarding overall allegations in Nard's lawsuits with Armour and Company. Mr. Hultman said he is of the opinion this matter could best be handled in the Pittsburgh, Pennsylvania, area in court, but said he would consult with United States District Judge McManus within a week, if possible, to get an opinion of the court concerning any perjury investigation in this area. Hultman said he was requesting no investigation by the FBI until United States District Judge McManus has been consulted, and renders his views on the case.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

QUESTION: ARE YOU FAMILIAR WITH THIS FBI REPORT?

D.D.

QUESTION: ON PAGE 25, THE FBI STATES THAT YOU TOLD THEM YOU MET WITH NARD INITIALLY ON MARCH 10, 1971, AT WHICH MEETING NARD ALLEGED WILLIAM BOSSENBERGER, AN ARMOUR EXPERT WITNESS, HAD COMMITTED PERJURY AT THE SIOUX CITY TRIAL. NARD GAVE YOU A COPY OF BOSSENBERGER'S TESTIMONY AT THAT TIME. HOWEVER, ON PAGE 26, IN THE SECOND PARAGRAPH, THE FBI STATES THAT YOU TOLD THEM ON APRIL 20, 1971, THAT YOU HAD RECEIVED ADDITIONAL MATERIAL FROM JOHN NARD. WHAT WAS THIS ADDITIONAL MATERIAL YOU RECEIVED FROM MR. NARD?

D.D.

QUESTION: DID IT INVOLVE ALLEGATIONS AGAINST ARMOUR WITNESSES OTHER THAN WILLIAM BOSSENBERGER?

D.D.

QUESTION: MR. NARD HAS TOLD COMMITTEE STAFF THIS ADDITIONAL MATERIAL WAS THE TRANSCRIPTS OF THE SIOUX CITY TRIAL WITH NOTATIONS IN THE MARGINS BY NARD OF ALLEGED PERJURY BY OTHER ARMOUR WITNESSES. DID YOU ASK NARD TO UNDERLINE ALL ARMOUR TESTIMONY AT THE SIOUX CITY TRIAL THAT HE BELIEVED WAS PERJURIOUS AND SEND IT TO YOU?

OGH

HEARING EXHIBIT #2

QUESTION: I HAVE HERE A LETTER DATED OCTOBER 28, 1971, FROM YOU TO JACK NARD, IN WHICH YOU NOTE THE RECEIPT OF STATEMENTS AND TRANSCRIPTS MAILED TO YOUR OFFICE. IF YOU WERE ONLY INVESTIGATING WILLIAM BOSSENBERGER, WHY WERE YOU OBTAINING OTHER STATEMENTS AND TRANSCRIPTS 8 MONTHS AFTER YOUR INITIAL MEETING WITH NARD WHEN HE GAVE YOU THE BOSSENBERGER TRANSCRIPT?

OGH

Senator DeConcini. I think this has already been delivered to you in the package. This is an FBI investigative report written by the FBI Pittsburgh field office on February 24, 1971, following their interview with Jack Nard on February 22, 1971. The Pittsburgh office forwarded a copy of this report to the FBI field office in Omaha, Nebr.

The Omaha office apparently added pages 25 and 26 to this report on May 13, 1971, and forwarded it to U.S. Attorney Hultman. This report is marked "Received May 18, 1971, U.S. Attorney, northern district of Iowa."

I would like to refer specifically to pages 25 and 26, if you could find those so we could be in the same area—particularly page 26. Are you with me?

Mr. Hultman. Yes, sir.

Senator DeConcini. Going first to page 25 where it starts off at the top—do you have a copy of this, Senator?

Senator Grassley. No. I suppose I ought to have a copy.

[Senator Grassley receives a copy of the exhibit.]

Senator DeConcini. Where it says "William Bossenberger," there are two paragraphs; and I am just going to read the first part of the first one. If you want to go into further, fine; I only want to lay the foundation here of my concern with the statements just read.

> On March 9, 1971 Evan L. Hultman, U.S. attorney, Northern District of Iowa, Waterloo, Iowa, was consulted concerning the civil case involving John Nard, Armour and Company, Chicago, Ill., which case was heard in the U.S. District Court of the Northern District of Iowa.

Down in the next paragraph it says, "On March 10, 1971, Mr. Hultman stated he met with John Nard, who furnished him with a copy of Bossenberger's testimony in the civil case."

Then going to the next page, second paragraph—page 26—it says,

> U.S. Attorney Hultman has been recontacted on March 29, April 9, April 12, and April 20, 1971. On the latter date Hultman said he had received some additional material from John Nard which he would utilize in his conversations with U.S. District Judge McManus.

My question, Mr. Hultman, is this: On page 25, the FBI states that you told them you met with Nard initially, on March 10, 1971, at which meeting Nard alleged William Bossenberger, an Armour expert witness, had committed perjury at the Sioux City trial. Nard gave you a copy of Bossenberger's testimony apparently at that time.

However, on page 26 in the second paragraph, the FBI states that you told them on April 20, 1971, that you had received additional material from John Nard. What was this additional material you received from Mr. Nard?

Mr. Hultman. Senator, first of all let me say I do not have any idea what the additional materials would be.

Senator DeConcini. Were you satisfied that there were additional materials?

Mr. Hultman. As I said to you this morning, there is no question in my mind, after seeing the matters Monday afternoon—and some of these certainly are included in that—that my response to you, which was a truthful response without any records or anything else—the thrust—and I guess that maybe that is where my problem was. I was totally cold—events 10 years ago—seeing nothing.

I was trying to project what was the thrust, as I recalled the first time he came to me, and continued to be up through the first grand jury. That was primarily Bossenberger.

That does not mean that because these records clearly show at some time or place—it was so intertwined; he talked about other things.

What I am trying to say to you is, you will notice in this report, if you look at the case name, if you look at some other FBI reports—and I do not remember which particular ones they are—it is clear that Bossenberger was the focus; he was the thrust. That is what I was trying to get at.

He indicated to me that his heartburn and his concern about the Sioux City trial was a witness, Bossen—I should not even be using the name, but a witness who had committed perjury—the engineer.

Senator DeConcini. Did the additional information involve allegations only against the witness Bossenberger, or could it have related to another witness who was involved in the *Armour* case?

Mr. Hultman. I have no recollection, but it could clearly be other individuals.

Senator DeConcini. Is it safe to say that that might be the case and that is what might have prompted you to go discuss it with Judge McManus? Do you recall discussing it with Judge McManus?

Mr. Hultman. No; I do not think I ever ended up getting the opportunity to talk to the judge. I talked to his clerk or to somebody finally. I was having difficulty.

He is the only judge in the northern district and, again, roved the whole northern district. So it was difficult at that time. Now we have two and a swing judge, so you do not have that situation.

I think the best answer I could give to you was that these things were so intertwined. In other words, anything that took place in the trial that Judge McManus sat on had a number of intertwining people, events, et cetera, tied to Pittsburgh.

So, although I was focusing on the engineer, because that was the complaint, that was, as I viewed it, what he was really wanting to look at, and did zero in. Now, your question then says to me, did he make—in effect, were there other allegations?

I am saying to you that I do not recall, but I would say that probably there were. I kept trying during this period—and I think the reports would show that—to tell him that those matters were Pittsburgh matters.

In fact, there is a statement in one of these reports, somewhere, where he goes to the Pittsburgh people in the beginning and talks about Pittsburgh things, and continues to talk to Pittsburgh about them, and those reports come to me then around the horn at some time in the future.

So, they become a part of your file, but I did not consider them to be matters that were in my concern, my jurisdiction, or my thrust at that time.

In fact, the attorney out there in one of these reports says in effect, "You're going to have to wait"—or some words to that effect—"until the civil trial in Pittsburgh is over." That is in one of the FBI reports from the Pittsburgh end.

What I am saying to you is that the thrust was the engineer, and that is what he was all excited about.

Senator DECONCINI. Let me ask you this: Is it safe to conclude that you received other material which very likely might have been additional allegations or material other than Mr. Bossenberger's?

Mr. HULTMAN. Oh, yes; I could well.

Senator DECONCINI. I think that is important because the next exhibit is exhibit 2, which you may have seen. It is a letter of transmittal from you to Mr. Nard, dated October 28, 1971.

[Exhibit No. 2 follows:]

HEARING EXHIBIT #2

October 28, 1971

Mr. Jack Nard
Woodcock Drive
Sweickley
Pennsylvania

Dear Jack:

Armour and Company v. John A. Nard

Enclosed are statements which I have copied and all of the transcripts which have been mailed to my office.

Sincerely,

EVAN L. HULTMAN
United States Attorney

ELH:tkt
Enclosures

Senator **DeConcini**. It indicates, "Enclosed are statements which I have copied and all of the transcripts which have been mailed to my office."

The reason I want to bring this out is that this is what has troubled this Senator and I think Senator Hatch. Despite your earlier statement on the 11th—and realizing your explanation that you were out of town and only had 2 or 3 days and did not have an opportunity to review the files—here are two documents that certainly indicated that there was additional information given to you.

That is the only point I wanted to bring out, and your explanation is satisfactory as far as I am concerned.

Mr. **Hultman**. And I do not even have any idea what, at this time or at that time, these transcripts that I have mailed back or the statements are. It could have been on the Sioux City matter, or it could have been something on Pittsburgh. I do not have any idea. In fact, I cannot even remember this particular letter.

Senator **DeConcini**. Going along with that, I now will give you exhibit 3 and exhibit 4.

Senator **Grassley**. Mr. Chairman, could I raise a point now?

Senator **DeConcini**. Certainly.

Senator **Grassley**. In your original question you asked about facts that surrounded the first contact between Messrs. Hultman and Nard, and that was in February. Would that necessarily involve things that happened in the fall of that year?

Senator **DeConcini**. My point, Senator, is that Mr. Hultman's testimony on the 11th indicates that sometime in 1971 or 1972 Nard came to him with a simple accusation and that was the sum total of his knowledge on the issue. When in fact, Mr. Hultman possessed evidence in addition to Mr. Nard's accusations.

That is my only point—to point to the fact that his statement on the 11th left me with the distinct impression, as it did Senator Hatch, that this was the only bit of information he had; while, in fact as he has explained, there probably was more. The FBI reports and his letter of transmittal led me to the same conclusion. That is the only reason I asked the question.

Mr. **Hultman**. Sir, let me also, by way of maybe a little further explanation—and maybe Senator Grassley would not be aware of this—at least at this time and during my 8-plus years in the U.S. attorney's office in relationship to the Department of Justice and the FBI, they would collect information of this kind from various places. They have offices that do not necessarily coincide with the U.S. attorney districts.

They would mail to the office certain reports, and these reports would have come to my office in Sioux City.

What I am about to say is not by way of making any excuses or anything, but just so that you understand. I was not a person sitting in an office in Sioux City running an office where things came before me every day. I was a circuit rider, and Bob Sikma was in that office. He lived there in that office and was the "go every day" guy that things went to that came to the office.

What then happened was—because I was on the circuit—copies would be made of documents and sent to the Waterloo office, or if I was trying cases in Sioux City they would give me that package of material.

So a lot of times things would go into your file, even a file that another counsel was handling.

Senator **DeConcini**. I can appreciate that.

Would you take a look at exhibits 3 and 4?

[Exhibits Nos. 3 and 4 follow:]

FD-204 (Rev. 3-3-59)

HEARING EXHIBIT #3

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, PITTSBURGH

Report of: THOMAS A. HUGHES
Office: PITTSBURGH, PA.

Date: 10/5/71

Field Office File #: 74-106
Bureau File #:

Title: CLIFFORD COX;
RALPH H. MARTEL;
[illegible] DAVIS;
NORMAN TRUMPITER

Character: PERJURY

Synopsis: JOHN WARD, Pittsburgh, Pennsylvania, alleged four officials of ARMOUR and Company perjured themselves in sworn depositions taken for a forthcoming civil suit at Pittsburgh. Assistant U. S. Attorney BARR, Pittsburgh, declined prosecution in this matter.

- C -

DETAILS:

This investigation was initiated on receipt of letter dated September 14, 1971, from RICHARD L. THORNBURGH, United States Attorney, Pittsburgh, Pennsylvania, advising that JOHN WARD had complained to the United States Attorney's Office, alleging possible perjury by Armour and Company officials.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/1/71

1

JOHN NARD, Woodcock Road, Sewickley, Pennsylvania, voluntarily appeared at the Pittsburgh Office of the Federal Bureau of Investigation. Mr. NARD referred to his previous interview at the FBI Office, Pittsburgh, Pennsylvania, on February 22, 1971, relating to his allegations of perjury on the part of officials of Armour and Company pertaining to this company's suit against him in Sioux City, Iowa, and advised that Special Agent THOMAS A. HUGHES should immediately contact United States Attorney IVAN L. HULTMAN for instructions as to investigation required of the Pittsburgh Office of the FBI in this matter. Mr. NARD advised U. S. Attorney HULTMAN is going to indict several Armour and Company officials for perjury on the basis of an eight month FBI investigation conducted at Sioux City, Iowa, and that same investigation is also required of the Pittsburgh Division in relation to these indictments.

NARD advised that Armour and Company is entering suit against him in Pittsburgh, Pennsylvania, and that depositions have been taken from several Armour and Company officials. NARD advised that the officials perjured themselves in these depositions as follows:

In the deposition of RALPH H. HARTEL, Vice President of Engineering, NARD advised that HARTEL testified that HARTEL visited the Pittsburgh construction site in early spring of 1968 and that everything was wrong with the job. NARD advised HARTEL stated, however, he didn't complain to the project manager for Armour and Company, D. E. ZIRRIBA. When NARD stated that when asked what specifically was wrong with the job HARTEL replied that machinery was in the way of the tile setters. NARD stated that when HARTEL visited the site in the spring of 1968 he told ZIRRIBA and him (NARD) that the work on the job was good and that material from the smoke house was in the way of the tile setters.

NARD advised that HARTEL states in his deposition that he visited the construction site again in July of 1968, and that again everything was wrong with the job, but did not complain to the project manager, D. E. ZIRRIBA. NARD advised that HARTEL claimed that the boiler room was behind schedule.

Interviewed on 9/27/71 at Pittsburgh, Pennsylvania File # Pittsburgh 74-166

by SA THOMAS A. HUGHES/cc Date dictated 9/30/71

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency. It and its contents are not to be distributed outside your agency.

NARD advised that MARTEL also stated in his deposition that the job was moving very slowly. NARD advised that he considers this to be perjury and can be proven by progress reports on the job.

NARD advised that in the deposition of CLIFFORD COX, Executive Vice President of Armour and Company COX stated:

1. That NARD would not make available accounting records for an audit.

2. That NARD did not have enough men on the job in Pittsburgh.

3. That NARD claimed he would walk off the job if he did not get paid.

4. That NARD was diverting funds to pay for a home that NARD was having built.

NARD advised that he considers these statements perjury, advising that NORMAN TRUMPETER, Accountant for Armour and Company .has a deposition to NARD'S attorney stating that NARD had cooperated in giving accounting records except for a check register that took a half hour to obtain and that this was stated in a humerous manner. NARD advised that there were sufficient people applied to the jobs stating that records will show that he had as many men on the job at its conclusion as at the beginning and towards the middle of the construction. NARD stated that COX'S statement that NARD would walk off the job is idiotic because it is certainly true. NARD advised that if he was not paid he would walk off the job. NARD advised that he has a letter stating that Armour and Company viewed the books, and found nothing wrong with the accounting records.

NARD advised that BILL MC KAVIS, who worked for DAN ZERIMBA gave a deposition to NARD'S attorney on Thursday, September 23, 1971, in which he said everything was wrong with the job. NARD stated that this is also perjury. NARD stated that MC KAVIS is looking for a job and wants to get out of Armour Company. NARD advised that MC KAVIS also stated in his deposition that NARD told him and ZERREBA that a 1966 payment of $300,000 from Armour Company was for drawings for the Pittsburgh construction project alone. NARD said he never made such a statement, that the $300,000 payment was for work on the Thornburg and Monroeville sites. NARD stated that his partner, however, signed a letter stating that 85% of the payment represented payment for drawings. NARD stated that his partner signed this letter because this was the only way they could obtain release of funds from the Armour Company.

NARD advised that MC KAVIS also stated in his deposition that he could not get in touch with NARD. NARD advised that he was always available on the construction site and that when MC KAVIS was asked to specify a specific incident in which he could not get in touch with NARD, MC KAVIS could not reply.

NARD advised that NORMAN TRUMPETER, an Accountant for Armour and Company, advised in his deposition that he never told NARD and ZIRREBA that the records were in order and that it was evident that there was no attempt by NARD to conceal the construction of his home. NARD explained that he, NARD, is building a home which he intends to pay for from profits derived from the construction work for Armour and Company and that Armour and Company officials have repeatedly made allegations that he was diverting funds from the construction project to the payment of the house.

NARD advised that there are numerous similiar examples of perjured testimony on the part of officials of Armour and Company throughout all of the depositions taken from these officials. NARD was asked if any of the individuals of Armour and Company have admitted any statements made by them to be perjury and he replied no. NARD advised that he believed RAYMOND GOSS and THOMAS J. JACKSON have suborned perjury. NARD stated that D. E. ZIRREBA was present on one occasion when attorneys GOSS and JACKSON inferred to JIM PERRY, an Electronics Contractor, FRANK SCHNIEDER, a Mechanical Contractor, and ROBERT RAMPA, another Contractor that if they did not sign false statements they would not be paid for their contracts. NARD advised that these statements were not being taken under oath. NARD theorized that GOSS and JACKSON have also pressured other Armour officials to give testimony constituting perjury.

On September 27, 1971, this matter was discussed with HENRY BARR, Assistant United States Attorney, Pittsburgh, Pennsylvania. Mr. BARR advised that these statements which Mr. NARD alleges are perjury, are so broad and unconfined that they constitute proper matter for a jury to resolve in the forthcoming civil action and do not, in Mr. BARR'S opinion, constitute sufficient cause for further FBI investigation in this matter. Mr. BARR advised he could consider no further prosecution in this matter.

HEARING EXHIBIT #4

BUCHANAN, INGERSOLL, RODEWALD, KYLE & BUERGER
ATTORNEYS AT LAW
1800 OLIVER BUILDING
PITTSBURGH, PA. 15222
AREA CODE 412
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GEORGE M. HEINITSH, JR.
EDWARD M. SCHOYER
REX ROWLAND
ROBERT F. PATTON
GLENN B. REED
JAMES G. PARK
JAMES D. MORTON
WILLIAM V. RODEWALD
JACK G. ARMSTRONG
LOUIS EMANUEL, III
ROBERT L. FRANTZ
CLAYTON A. SWEENEY
R. SIDNEY NEUMAN
WILLIAM R. NEWLIN
ALAN BRUCE BOWDEN
GEORGE L. CASS
LARRY E. PHILLIPS
JAMES R. SWEENY
STEPHEN A. GEORGE
THOMAS M. THOMPSON
CALVIN R. HARVEY
ROBERT A. JOHNSON
H. BRUCE McCULLOUGH
JOHN J. PETRUSH
GREGORY A. PEARSON
R. DELL ZIEGLER
DAVID H. PEREZ
JOHN A. MILLER

October 8, 1971

Evan Holtzman, Esquire
Federal Building
Waterloo, Iowa

Dear Mr. Holtzman:

Enclosed please find a copy of Clifton Cox's deposition which John Nard asked me to send you.

Very truly yours,

Thomas M. Thompson

TMT/cab

Enclosure

Senator **DeConcini**. Exhibit 3 is another FBI investigative report dated October 5, 1971, from the FBI Pittsburgh field office, detailing Nard's allegation of perjury against four Armour officials in pretrial depositions in the *Nard/Armour* Pittsburgh litigation.

Exhibit 4 is a letter from Mr. Nard's attorney Mr. Thompson to you, dated October 8, 1971, wherein Mr. Thompson is sending you a copy of a deposition given by one Clifton Cox.

Mr. **Hultman**. I am not following, sir. Would you tell me again which page you are on?

Senator **DeConcini**. Exhibit 4. Do you have exhibit 4?

Mr. **Hultman**. OK. I was looking at 3; I am sorry.

Senator **DeConcini**. This is a letter from Mr. Nard's attorney dated October 8, wherein Mr. Thompson is sending you a copy of the deposition given by Clifton Cox in Pittsburgh, Nard claims it is perjurious.

Are you familiar with those two? Do you remember seeing those, or do those fall in the same category of going into a file?

Mr. **Hultman**. They fall in the same category, and I would take no issue with this evidently taking place.

Senator **DeConcini**. That underscores exactly the problem we have in this case. Why would an FBI report from the Pittsburgh field office of the FBI regarding Nard's allegation be in your files if someone did not know of their existence? I made the assumption that, since you were the U.S. attorney, you would have been aware of them.

I can understand how it can happen that you might not be, but what are we to make of these documents, when you said you did not have them and they show up in the file?

Senator Grassley.

Senator **Grassley**. Could I ask first if this deposition was taken in regard to the Iowa case or the Pittsburgh case?

Senator **DeConcini**. The Pittsburgh case.

Senator **Grassley**. And it was before——

Senator **DeConcini**. Before the first grand jury.

Senator **Grassley**. And before the Pittsburgh case went to trial?

Senator **DeConcini**. That is right. And it was sent to Mr. Hultman, obviously at Mr. Nard's direction.

From the testimony I got the distinct impression that Mr. Hultman did not know anything about the Pittsburgh case. When the staff found these documents the question came to mind, and I think, justifiably so.

I can appreciate that. Things come into my office that I surely do not know about.

Mr. **Hultman**. Sir, if you will go the last page of exhibit 3, you will see what I was referring to. I did not realize this was the document.

You see there the assistant in Pittsburgh says—as I read this report—that these are allegations that Mr. Nard is making in Pittsburgh, not making to me in Waterloo. Now maybe I am wrong.

Senator **DeConcini**. I think that probably is a fair assumption. My only purpose is this: I got the distinct impression from your testimony of December 11 that you knew nothing about the Pittsburgh case.

Mr. **Hultman**. And that is in error, as I said to you this morning, sir.

Senator **DeConcini**. In fact, you did; and that is my only point. Just give me 1 minute here. I have so many exhibits here, and I am not sure I want to go into every single one due to the time.

I hand you what is known as exhibit 5.

[Exhibit 5 follows:]

LEGAL PAD

atty Berger for Jack in Pittsburg
Jan 28 - 30 day - notice to appear -
Joe Berg -

HEARING EXHIBIT #5

I. ROBERT RAMPA: statement - dated 12/18/68
statement after payment 9/29/71
Rampa Marble & Tile
Washington Blvd, Pittsburg, Pa

1. He can testify William McHavis is a [illegible]
We have deposition on McHavis - project engineer - Mr. Zarumba became my boss - proj.
2 No trouble getting in touch with Jack - on the job all the time.
(Company changeover - tried to blame Jack)
Can testify job was run effectively [illegible] house people (theirs) had job tied up.
3. Testify they told Jack who to [illegible]

II William S. Beyer - Pres of Atlas Insulation, [illegible]
1. He will testify never came off job.
McHavis says on page 51 & 52 of his deposition [illegible]
2. atty Jackson in Pittsburgh wanted to [illegible] him to [illegible] Jack offer, 70 - he refused without his attorney. Atty Jackson tried to write a statement saying that "the Armor Engineers were capable" - [illegible] him write it 3 times & said that [illegible] what he was going
(a) statement - Nov 25, 1968 - legal [illegible]
(b) statement - contacted later after [illegible]
(c) letter - Aug 1, 1968 - McHavis [illegible]
He changed the insulation - three [illegible] different hangers - hangers [illegible]
(d) Agreement Dec 14, 68

ⓐ Receipt Feb 1, 69
3. Boyer can testify that Neal wanted top job — he has all the charge [illegible] – stack of them, 135,000 to 200,000 [illegible] all charges
ⓑ Can testify Jackson job.
ⓒ Jackson ask wife whether Jack [illegible] Boyer -- she said no

III Frank Briestadt – Subcontractor [illegible]
1. He can show that Bell Mc is a liar when he said Boyer walked
2. Armour told him that if Armour paid Jack, Jack could pay him (Frank
3. Jack did top notch job & greatest meat plant built & their Armour engineers didn't know what they [illegible]
Still went with Jack after [illegible] –
4. McKeen's deposition refers to Briestadt

IV – Irvin [illegible] – [illegible] for Terry [illegible]
1. October 1, 1971 statement [illegible]
[illegible] they [illegible] the job [illegible]
Armour [illegible]
3. Tried to get him to sign statement Armour people (attorneys)
V James Terry –
1. tried to get him to sign document.
2. Finally paid him 300,000 – 3 years later
3. Armour didn't know what they [illegible]
4. Charges — 100% that he would [illegible]
5. Neal on job – no trouble reaching
6. Highest quality job –

(Ned to send me second statement.)
7. Arnoux gave depo notice to Jerry
Judge said they had to answer Ned's
interrogatories — Jackson [illegible]
called Mr. Jerry's atty — said that they
were going to put off Berger depo if
Jerry would talk to them, they would [illegible]
to talk. They had Jerry give statement
work went smooth after Jack left.
He said Jackson tried to get personal
file on Jack's house — separate
file & separate items.
8. He signed statement because he had
a letter in his file from Arnoux on
July 21, 1969, stating what a good job
Jerry & Gruenbeck had done!
9. 1/13/68 — Ned complained to Dan Fenimore
about so many changes on statement — he
wrote letter to engineer to get [illegible] /
offices

II James McCulley (Ned's brother-in-law)
1. Can testify about McKee's [illegible] and whole
bill Jack was to pay.
2. Ned [illegible] separately — and [illegible] 40
— Mr. Yamamoto & Trump knew fully
what was going on — and approved.
3. Arnoux would pay him the 43,000 [illegible]
him if he would give them the personal
file on Jack's house — He called Jack [illegible]
& Jack told him go ahead — all in the [illegible]
anyway. (Jack did the engineering — and

4. fob-ing one night — [illegible] Arrow didn't know what
5. tried to blackmail him in Sioux City
   statement from Orin Hatch confirms
* didn't delay in Sioux City.
*6. He should be able on HARTEL —
7. No fed deposition
8. When he gave Nard invoices, they would pay him & sued him for fraud in [illegible]
9. Schedule 40 — They paid him $75,000 to keep working. they sued Jack for paying him on house.

VII Joseph Schmitt
1. Statement Aug 5, 1969
2. Jack knows what he is doing — does work for his company — Arrow went to him

VIII FORBES BURDETTE, JR.
District Salesman for ALCOA
1. Statement
2. Fuentes & Thomas told Nard who to pay
3. tried to get them to stop trucks on the one that Nard was shipping F.O.B. — told them to stop
4. V.P. of Arrow called VP of Alcoa & tried to pressure them — siding with Nard in the fight — that Nard had been a good client & they weren't siding with anyone!

×5. Klinger didn't know what he was doing in S. City — didn't know what [illegible]

IX. KIETH REID — Alcoa — Mgr. of ALPER division
1. Depositions:

He put 400 aluminum gutters - [illegible] at was it charged to Armour.
2. They lost hundreds of millions (Hickman [illegible] school at Accor.)

X. R.C. IMS
1. F1100 each ladder they claim
Jan. 5, 1969 - Bill to Nard personally - paid by Nard.
2. He took a note for this job — Jack wouldn't give note if Armour had paid for it.
3. Billing

XI CLARENCE SCRANTON - Sr. design engr. for Am. [illegible]
1. Bossenber say
2. Jackson got statement from Scranton - that Jack had paid for work on house with Armour money. He actually worked about 3 times & put bars under as a favor. American Bridge was his employer
3. Armour had so many charges that Nard only [illegible] could
4. In Pittsburg Nard paid American Bridge
→ In Sioux City they allowed him to [illegible] personally
5. Scranton has made numerous requests for copies of his statement — Jackson refuses
6. "If you give us copy of statement you gave Nard's attorney, then we will give you a copy.
★ 7. Bossenberger said Scranton was empl.
8. Court testimony in Sioux City.

XII· DONALD HARKER – Pres of Hereford Engr.
1. Made numerous charges
2. Electrical man from Armour knew nothing, bigg trouble maker, etc
3. He did Jack's house – kept everything separate.
4. He gave Armour statement – tried to get a copy – Had to go to his atty to get copy. Said in statement that Reed was for the [illegible] but really didn't say this.

* 5. Testimony at Sioux City trial

XIII TROTTER – Russell [illegible]
FRANK BUCK
1. tried to get them to sign false statements

XIV· Bruce Locke – Reed James Co. –

* 1. Cap told jury Reed couldn't get bond in [illegible]
2. Drawings seriously 90% at time contract signed – can't perform when you don't know what to perform
(NO-BOND – BUT REASON

*XV· Jason Countryman – Architect [illegible]
1. Testimony in Sioux City
2. tried to make him so
3. made him sign statement that Jackson wrote
4. Ones to read it – he gave true statement & they wouldn't

* 5 Bassenberger – liar.
6. (All subs are friends of Jack – they testify
7. Letter to Engineering society
8. Letter from Glass; letter to Cap

* XVI. Daniel Zerimba (push-drink)

1. Letter to Judge McKinnis
2.   against Hartel, Jackson, Armstrong, [illegible]
3. Ask him if anything wrong with job [illegible] times — played along until he got job.
4. Incompetence of Armour.
5. Phoney Hartel is

* 6. In July Hartel at Potts plant – that he made Zerimba pay $200,00

7. Phoney paper in federal court —
8. Letter
9. Read deps in S.C. case
10. He had everything

will kill McKinnis; cop, Hartel, trumpets
— he knows where the info is located —

# 11. Perjury is Armour or Zerimba in S.C.
Nard didn't delay as he did!

12. Pursuant to letter

He should have known anything was talking!

1. Did Prair & Hartel know that [illegible] never furnished. Nard [illegible]
How important was this
2. Why did Hoss (Armour) [illegible] Armour [illegible] ?
3. Did Nard delay?
4. Did Hoss, [illegible]

He had all but [illegible]

14" (must without [illegible] ally Goss ally JACKSON [illegible]

XVII. John Evans and Frank Rogers

1. Gave statement to Jack that I said did with Armour job.
2. Bookkeeper made a mistake
3. I was swapping top soil for the work on the house. Nard don't [illegible]

Grumbs – but Jackson wouldn't put statement in the written statement.
4 Jack Reed will send statement.

XVIII ORAN HATCH – Armour
1. Law firm in S.C. trying to [illegible] McCarthy
2. Unethical practices of Thomas Jackson
3. Wm Sutton – handles case [illegible] trying to get Jack to put in good for him to Gen. Hoyt because I was fired off Dick.
4. He told Armour they had no case against Reed
5. Letter was sent to Gen. Hoyt to the effect (SUTTON wrote letter to Gen. Hoyt) McKanis has this letter
Law firm of Sawyer, Walter McArthur etc.

XIX Robert E. Garner – Pres. [illegible] Cutter
1. Never received answer to telegram concerning status of plant
2.

XX Jess Pooler – V.P. Analysis
1. Mr. Clark V.P. Armour talked to him of the telegram on unsafe plant – That plant was safe – only said in Fed. Court in suit with Reed.

XXI Pres. – Pillsbury – Analy
1. Safe but
2. Grumba said – Pillsbury – [illegible] called him – Yes. Got telegram to carry along – That plant wasn't unsafe

* terribly opposed this fellow yet - must subpoena him!

XXII George Kibler - Pres. Chief Exec. Kibler Bros. Inc.
former Group VP of Armour Foods
1 He told Nard that Armour Engineer job threw him off Tikes Bros. plant [illegible] didn't give 'enough' refrigeration,' but just contractor in Iowa, does
fired chief engineer Jack stalled until fix incompetence. Cap & Al Dreier sealed their rot
Ingee associates did study which [illegible] engineers incompetent: (Can't get study)
2 Al Dreier & Cap both sealed in writing

attorney peter [illegible]

XXIII Harris J. Ashton - Chairman of Board of Greyhound [illegible]
1 He told Limbaugh that Nard's case good & should settle. $1,000,000 settlement offer [illegible]
2 Ashton met with Al Dreier & Jack Nard in Chicago. Ashton had heard all day before what bad guy - sued Jack in Iowa just to keep
Joe Saunders group had screwed up & wasn't Nard's fault

XXIV. Peter Rusch - Greyhound atty -
1 was at Zenzola's depo in Iowa City - grilled Jack with - said it was [illegible] you (Jack) didn't do anything wrong - [illegible] this stuff about? How much would Jack settle for - going back to trustees
— settlement —

XXV. Gerald Trautman - Chairman of Bd of Greyhound [illegible], Arizona -
1. What he was told re past testimony of [illegible] in
2. U.S. Steel's expenses
3. What Gen Short's atty told him about suit.

XXVI. Leslie B. Worthington - retired Chairman of U.S. S[illegible] Bd member, Armour & Greyhound Corp.
1. Is [illegible] competent?
2. Bessenberger testimony before meeting
3. What was involved in Bd meeting

XXVII. — Pres. of Armour [illegible]
1. The Clerk in Armour ~~[illegible]~~ was afterward -
He had a friend who was [illegible] & would [illegible] Armour job.

HEARING EXHIBIT #3

[illegible]

1 [illegible]

[illegible] 2 Hartel(?) Why did your letter become [illegible],

[illegible] (b) Cop depo in [illegible] say why Hartel left

[illegible] [illegible] - change of assignment [illegible]

(c) Page 1054 - [illegible] City - Ct -

[illegible] Watkins said - after Sept. meeting

[illegible] Nov. 6 to July 31 - approx 365 days - after 15 days of [illegible]

[illegible] -DRAIN- that he couldn't do it -

[illegible] page 1044 He threatened to [illegible] - [illegible]

[illegible] [illegible] said Mr. Bulmer is my boss.

[illegible] (d) Cop. says Hartel told him Hartel told him,

3 Wm [illegible] - [illegible], [illegible], [illegible]

— Cost [illegible] millions & find them off, [illegible]

How many [illegible] days or years.

"2 to 3 weeks"

Letter in [illegible] file said "6 weeks."

4 [illegible] — "matter of opinion" -

p1068 on tires & everything - "Doesn't [illegible] in anyway - How can he say this [illegible] way within a year.

He said [illegible] people did this - [illegible] allowed [illegible] — architect [illegible] Estimate of 20 [illegible] of settling. Did you set the settlement marker? No (they [illegible] the job for - how could contractor [illegible] responsibility? - [illegible] of 958 - [illegible]

[illegible] 5 [illegible] - Doc. p. 1681 [illegible]

[illegible] [illegible] - yes!" [illegible]

[illegible] 6 (a) [illegible] City [illegible] 45 day [illegible] 45 days delay - [illegible]

p. 11 of Rep. [illegible] [illegible] said a word about it [illegible]

(c) p. 14 [illegible] (Hartel had nothing to do with paying!) [illegible] at later point.

[illegible] (d) Page [illegible]

(e) Hartel said they had been [illegible] [illegible]

[illegible]

(d) Hartel p. 1038 deposition of Hartel

f. Page 33 - [illegible] had paid little [illegible]

g. " 34 -

[illegible] about to [illegible]

6 DRAIN - V.P. [illegible] depo in [illegible]

(Bill Kemp + [illegible] - [illegible] told Drain [illegible]
times that he had given Drain

Drain said in court said I hadn't talked [illegible]
much (but had talked after!)

(Drain met with Ashton -
a. Drain + Cap [illegible] accounts - ?

Berger pulled Drain's own notes out of [illegible]
[illegible] through.

*1. V.P. [illegible] a. Page 1011 - his own notes - then [illegible]
was mentioned - then read your notes [illegible]

TRIAL * reason for delay — but [illegible]
said it was stut! - [illegible]

b. Page 1014 - [illegible] settled! (But he had
never heard about it)

7. HARTEL - will say - a) [illegible] qualifications
b) C.B. testimony
c) [illegible] depo - 5000 stock option - cap.

8 COX - deposition

Senator **DeConcini**. These are apparently handwritten notes of yours regarding the Nard investigation. These also were found in the files and obtained by the committee from the Department of Justice. Do you recognize these handwritten notes?

Mr. **Hultman**. The notes are mine—yes; this is my handwriting.

Senator **DeConcini**. If I could, I would direct you to the last two pages of your notes wherein you list seven names, the first one being Bossenberger. Are you with me?

Mr. **Hultman**. Yes.

Senator **DeConcini**. The second is Hartel.

Mr. **Hultman**. Yes.

Senator **DeConcini**. Therein you list both Ralph Hartel and Clifton Cox under your perjury headings. Were they targets, to your recollection, of a perjury investigation of the Sioux City trial?

Mr. **Hultman**. First of all let me say to you that to go back and try and put together, Senator, who, besides the original one we have talked about, would be almost an impossibility for me.

I do not know whether or not I should even be discussing specific names here, for very obvious reasons I think both to you as a former prosecutor and to me.

I would say to you this: These names, to me, as a group do not fall into that kind of a category—no.

The heading at the top has to do with the individual whose name appears immediately below. From there on they do not have any particular significance to me in terms of the question that you are specifically asking.

Senator **DeConcini**. Are you leaving me with the impression that you think the names, other than Bossenberger, might have been a perjury reference to some totally different case?

Mr. **Hultman**. No. What I am saying is that those names do not at this time indicate to me in response to your question that they fit into the category that you asked me about.

Senator **DeConcini**. All right. Do they fit into the category of being a heading of witnesses who testified in the Sioux City grand jury or who testified at the Sioux City trial?

Mr. **Hultman**. They do not fall into any particular category to me.

Senator **DeConcini**. Maybe this is the best way to do it, Mr. Hultman, in light of the 1971 FBI report, your correspondence to Mr. Nard in 1971, and your own work product. Can you clarify your earlier statement in December that your office received only one single accusation?

Mr. **Hultman**. I do not know when this document was, Senator, first of all. I do not know if this is 1971, 1972, 1973, 1974, or 1975; I do not have any idea.

What would appear to me to be here—I would sit down and take down from Mr. Nard what his observations were as to witnesses, and then I would write it down.

Senator **DeConcini**. So you think this is more kind of notes of an interview with Mr. Nard?

Mr. **Hultman**. There is not any question about that.

Senator **DeConcini**. Rather than any preparatory notes going to a grand jury or considering going to a grand jury?

Mr. **HULTMAN**. There is no question about it—that these are my notes from discussing these very people and the items that are on here with Mr. Nard. There is absolutely no question in my mind about that.

Now, that also of course could well be in preparation of me going into the grand jury.

Senator **DECONCINI**. You cannot recall?

Mr. **HULTMAN**. No; I cannot recall.

I would talk to him on numerous occasions, some of which were when I asked him many other times, when he would be calling me at all times, and so forth. But I do not recall this list having any special meaning of any kind.

The second page certainly does not ring a bell with me to be a category that you have referred to.

Senator **DECONCINI**. OK.

Mr. **HULTMAN**. For example, I have not been through this in any detail, and I want you to know that; but as I am looking at the first page, I note that he says, "Can testify job was run efficiently." So we are referring to what Nard says to me this fellow has got knowledge on.

Senator **DECONCINI**. Does that mean that you are more comfortable with the conclusion that exhibit 5 represents notes from an interview?

Mr. **HULTMAN**. No; not from an interview, except with Nard.

Senator **DECONCINI**. That is what I mean—with Nard.

Mr. **HULTMAN**. Yes.

Senator **DECONCINI**. Not with the individual, but this is with Nard, going over his allegations.

Mr. **HULTMAN**. That is right.

Senator **GRASSLEY**. Mr. Chairman?

Senator **DECONCINI**. Yes?

Senator **GRASSLEY**. You said as a group these do not fall into any particular category. Does that mean then also individually one or more do not fall into that category?

Mr. **HULTMAN**. Senator DeConcini asked me, Senator Grassley, whether or not on the next-to-last page those people fell into a given category—"targets" is the word, or something to that effect.

Senator **GRASSLEY**. As a group?

Mr. **HULTMAN**. Yes.

Senator **DECONCINI**. Or individually.

Mr. **HULTMAN**. Yes. And I indicated to him, to the very best of my knowledge they did not.

Senator **GRASSLEY**. I think he said the last two pages, not just the last page.

Mr. **HULTMAN**. Oh, I am sorry.

Senator **DECONCINI**. Just the last two pages—that is correct. Thank you for that correction. Just where the seven names are listed.

Mr. **HULTMAN**. Yes.

Senator **DECONCINI**. OK. Let me refer to exhibit No. 6—excuse me. Let us try exhibit No. 7. We will go back to 6.

[Exhibits 6 and 7 follow:]

HEARING EXHIBIT #6

UNITED STATES DISTRICT COURT
PITTSBURGH, PENNSYLVANIA 15219

JOSEPH F. WEIS, JR
JUDGE

February 8, 1973

Mr. Martin G. Hamberger
Administrative Assistant to
The Honorable Hugh Scott
Room 260
Old Senate Office Building
Washington, D. C. 20510

Dear Mr. Hamberger:

Thank you for a copy of Mr. Nard's letter of January 16, 1972 wherein he complains about denial of a continuance of a trial involving him and the Armour Company.

I feel that I should comment on some of the points raised in his letter to clarify the matter.

On January 11, 1972 the parties to the lawsuit were advised of a planned trial date in March, 1972. All were told at a conference on that date, as well as at several earlier meetings, that because of the age of the case (it was filed in November of 1968), it was to be given priority for disposition.

Consequently, when the request for postponement was made not long before trial so that Mr. Nard could testify before a Grand Jury in Iowa, I felt that the delay in commencing the trial should not be granted. However, as an accommodation to Mr. Nard, I talked by telephone to the United States Attorney in Iowa and explained the difficulties of the scheduling situation in Pittsburgh. He was most cooperative and did not indicate any difficulty as I recall in rescheduling Mr. Nard's appearance before a Grand Jury. To further assist Mr. Nard and his attorneys, I advised that a two-day recess would be granted during the week of March 13, 1972 after the trial got underway.

In order to insure that adequate time was allowed all parties for presentation of their cases, I held two Saturday sessions on March 18 and March 25.

It seemed clear that the proceedings in Iowa, which were in the inception stages, would have to yield to the trial of the case in Pittsburgh which was already 40 months old.

Mr. Nard's attorneys did not request a continuance on the basis of lack of preparation and indeed the trial showed evidence of careful and extensive preparatory work on the part of his very competent attorneys.

For your information I am enclosing a copy of the Opinion filed in this case which is presently on appeal.

Sincerely yours,

Joseph F. Weis, Jr.

JFW, Jr./cn

HEARING EXHIBIT #7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, ex rel
ARMOUR AND COMPANY,
Plaintiff,
v.
R. STEWART SCOTT, et al.,
Defendants.

Civil Action No. 73C 200
(Western District of Pennsylvania - Civil Action No. 68-1372)

10-3-73

BRIEF IN RESISTANCE TO MOTION TO COMPEL ANSWERS TO DEPOSITIONS

STATEMENT OF FACTS

Because of the Government's somewhat unique involvement in the above entitled cause of action, a statement of the facts underlying this involvement from the Government's point of view would appear to be required.

On August 21, 1967, Armour & Co. ("Armour") entered into a contract with Three Rivers Company ("Three Rivers"), a partnership comprised of R. Stewart Scott, Walter A. Scott, Jr., Porter H. Scott (hereinafter "the Scotts") and John A.Nard("Nard") for Three Rivers to design and build, to Armour specifications, a meat processing and packing facility in Pittsburgh, Pennsylvania. In fact, Three Rivers had already commenced work on the project.

Although matters went smoothly at first, by the Spring of 1968 the project began to fall apart at the seams. Despite this, on September 6, 1968, Armour contracted with Nard for the construction of a hog processing facility in Sioux City, Iowa. Nard had been working on this facility since April of that year. By November, 1968, things had gone awry on both the Pittsburgh and Sioux City projects, and on November 21, 1968, both contracts were terminated.

Armour subsequently brought suit for breach of both contracts, alleging in addition in Pittsburgh claims for restitution for monies diverted from the payment of subcontractors and for monies allegedly diverted by Nard to the construction of a mansion by him. The defendants counterclaimed. The Sioux City case came to trial first. On February 8, 1971, Nard received partial summary judgment for $ 75,965.10 with interest. By jury verdict on February 10, 1971, Nard received an additional $ 20,842.16 but Armour received $ 60,000. Thus Nard was successful in the amount of $ 36,807.26.

Shortly after this, but before trial in Pittsburgh, Nard appeared in the respective offices of the United States Attorneys for the Northern District of Iowa and the Western District of Pennsylvania. He demanded a criminal investigation of alleged perjury committed at the trial by Armour employees and by subcontractors which Armour retained on the job after Nard was terminated. He also demanded that an observer be present at the upcoming Pittsburgh trial to observe perjury that Nard alleged would be committed there. Supposedly, all of this perjury would in some way be rewarded, in the case of Armour employees by non-termination and lucrative new assignments, and in the case of subcontractors by their being retained on the job and receiving substantially more than the job was worth.

Although files were opened, no formal investigation was undertaken at that time. At the Pittsburgh trial, the decision of which is at 360 F.Supp. 319, the Court ruled that since both parties were materially in breach of their respective obligations, no damages would be awarded therefor. The Court did, however, order restitution of $ 670,214, $ 395,101 being sums advanced by Armour for payment of subcontractors which were not so paid, and $ 275,113 found to have been diverted by Nard to construction of his house.

Nard continued his demands for investigation and prosecution, both at the level of the United States Attorneys' Offices and in Washington. It was decided that the matter would be consolidated in the United States Attorney's Office in Sioux City to avoid duplication of effort. Although the FBI was utilized for limited investigative purposes, it was decided that Nard would be required to submit extensive documentation of his allegations before the matter would be carried further. It was also decided that in view of the complexity of the facts and the subtlety of the alleged offense, if Nard could substantiate his allegations the matter would be made the subject of an investigatory Grand Jury in the Northern District of Iowa.

Over a period of approximately 18 months, Nard was able to submit sufficient documentation of his allegations, in the form of seven large notebooks, to cause the convening of a Grand Jury at Cedar Rapids, Iowa. Although numerous witnesses were called to testify at the first meeting, only a few, including Nard and some of his supporting witnesses, actually got to testify because of time considerations. Nard was warned, however, that the Grand Jury was purely investigatory, would be completely even-handed in its treatment of Armour, Nard and the others, and was prepared to investigate criminal offenses on both sides of the fence.

On March 14, 1973, a subpoena was issued to Armour to produce all documents relating to Nard's allegations, returnable March 21, 1973. Other subpoenas were issued to Armour personnel and former personnel. Armour appeared by counsel, Mr. John Stack, and indicated that it would attempt to comply with the subpoena, but that there were voluminous documents, both relevant and irrelevant to the Grand Jury investigation, documents too voluminous even to be transported to Sioux City without screening. After consultation, it was agreed that an Assistant United States Attorney, Alan H. Kirshen, would travel to Pittsburgh, Chicago and Phoenix to screen documents for consideration by the Grand Jury. Robert D. Tyler, Jr., a Chicago attorney, was retained by Armour to accompany Mr. Kirshen, to review the documents prior to Mr. Kirshen in order to assert privileges, to remove work product, and to insure that the Grand Jury's inquiry did not overstep its bounds. The screening function was completed over a period of weeks in April, 1973, after which significant documents were brought to Sioux City for consideration by the Grand Jury. At this time these documents continue to reside in the Grand Jury, which is not at present in session on this matter due to the instant litigation.

While the above was going on, several other developments occurred. First of all, John A. Nard, one of the Three Rivers partners, was indicted by a Federal Grand Jury in the Western District of Pennsylvania on July 15, 1973. This indictment and the upcoming trial are based upon an independent investigation conducted by the Internal Revenue Service and also upon matters brought to light by the Iowa investigatory Grand Jury. A trial date has not as yet been set, and this proceeding is presently in the discovery stage pursuant to Rule 16, Federal Rules of Criminal Procedure. The indictment is in three counts, alleging failure to file income tax returns for 1967 and 1968 and making a false income tax return for 1968. The falsity alleged in the last count is similar to that found in the Armour trial in Pittsburgh, i.e., failure to declare and pay tax on those funds diverted from the Armour project to Nord's personal use, including the construction of his house.

Meanwhile, the Sioux City case was appealed to the Eighth Circuit, which affirmed, 463 F.2d 8. The Pittsburgh case was appealed to the Third Circuit, which also affirmed, on May 31, 1973. In the District Court, Three Rivers moved to vacate judgment pursuant to Rule 60(b)(3), Federal Rules of Civil Procedure, on May 9, 1973, alleging that Armour had withheld discoverable evidence which it had allegedly supplied to the Iowa Grand Jury. In an attempt to prove up the facts alleged in its motion, Three Rivers on August 6, 1973, sought to take the depositions of Assistant United States Attorney Kirshen and Robert D. Tyler, the Armour attorney. This attempt has been vigorously opposed both by Armour and by the Government. At the moment, the attempted deposition of Mr. Kirshen is indefinitely stayed by the United States District Court for the Northern District of Iowa. Mr. Tyler was deposed in his district of residence, the Northern District of Illinois. At his deposition on August 13, 1973, objections to the questions posed were made by both Armour and the Government, and Mr. Tyler claimed privilege with respect to certain questions. The instantly considered Motion To Compel Answers To Deposition followed.

STATEMENT OF THE ISSUE

May a party discover, by deposing the attorney for an opponent in litigation, the nature and contents of documents submitted by that opponent, in confidence, to a federal grand jury notwithstanding the traditional cloak of secrecy over grand jury proceedings, where that party has in fact caused the grand jury investigation, where the grand jury is investigating the litigation itself to determine wrongdoing by either side, and where that party is the subject of a criminal indictment stemming from transactions intrinsic to those under investigation?

ARGUMENT

From the questions asked by the attorney for the Scotts, Nard and Three Rivers (hereinafter collectively "Defendants") at their deposition of Mr. Tyler, from the motions which they have made pursuant to Rule 69(b), Federal Rules of Civil Procedure, in the Western District of Pennsylvania, and from the record heretofore made in this proceeding, it is readily apparent that, contrary to the contentions in their Brief, Defendants are not interested in certain documents for the intrinsic worth of those documents. Rather, in order to prove their ultimate factual contention in the Pittsburgh proceeding that documents were provided by Armour pursuant to Grand Jury subpoena that were not provided to Defendants in their civil proceeding, they must discover and establish the precise quantity and nature of documents which the Grand Jury has received.

Although they might be intrinsically interested in the contents of documents if they are successful in re-opening the Armour litigation pursuant to Rule 60 (assuming *arguendo* that documents exist to which they have not had access), for present purposes the documents are relevant only as they relate to consideration by the Grand Jury. Accordingly, it is submitted that the doctrine of *United States* v. *Interstate Dress Carriers, Inc.*, 280 F.2d 52 (2nd Cir. 1960) and *In re Hearings Before The Committee On Banking And Currency Of The United States Senate*, 19 F.R.D. 410 (N.D. Ill. 1956), upon which Defendants rely virtually exclusively as grounds for disclosure here, simply does not apply. Instead, other language in the latter opinion is important here:

> "In those and many similar cases, it was important to know what 'occurred' before the grand jury precisely because it happened there and nowhere else. In other words, what may not be revealed is what was presented to the grand jury in that capacity."19 F.R.D. at 412.

It is the Government's contention in this matter that ordinary principles of grand jury secrecy apply. After all, it has long been the policy of the law to maintain the secrecy of grand jury proceedings, to shield them from scrutiny, to use all reasonable means to provide privacy of investigation, and to safeguard the grand jury from undue interruption by litigation. *Cobbledick* v. *United States*, 309 U.S. 323 (1940); *Blumenfield* v.

United States, 284 F.2d 46 (8th Cir. 1960), cert. den. 365 U.S. 812; Goodman v. United States, 108 F.2d 516 (9th Cir. 1940); Hancock Bros., Inc. v. Jones, 293 F.Supp. 1329 (C.D. Cal. 1968); United States v. Schoeneman, 203 F.Supp. 240 (D. D.C. 1962). This policy notwithstanding, Defendants now seek to invade the privacy of investigation by demanding answers to numerous questions about subpoenas which the Grand Jury has issued, about the quantity and source of documents under consideration, and about the nature of such documents. They have already unduly interrupted and harassed the Grand Jury by their inquiries and litigation, notwithstanding the fact that the Grand Jury was originally convened as a result of a complaint from one of their number. In these premises, it is submitted, the Court should refrain from placing a further imprimateur on Defendants' conduct by permitting them to carry on their unwarranted inquisition any further.

It is submitted that Rule 6(e), Federal Rules of Criminal Procedure, in no way alters the equation. That Rule, albeit in somewhat different form, continues the common-law rule of grand jury secrecy. the mere fact that it permits disclosure under certain circumstances does not vitiate the fact that grand jury proceedings are secret. In re Grand Jury Proceedings, 309 F.2d 440 (3rd Cir. 1962); United States v. Downey, 195 F.Supp. 581 (D. Ill. 1961).

In this instance, there has been no showing whatever that would justify disclosure of matters under consideration by the Grand Jury. For disclosure to be even permissibly considered, there must be a clear and convincing showing of compelling necessity for disclosure. *Blumenfield v. United States*, supra; *United States v. Brennan*, 134 F.Supp. 42 (D. Minn. 1955); *United States v. Wortman*, 26 F.R.D. 183 (E.D. Ill. 1960); here there has been no such showing. *In re Special 1952 Grand Jury*, 22 F.R.D. 102 (E.D. Pa. 1958). Only where there is a probability of serious illegality or injustice, where the ends of justice will be defeated, where the furtherance of justice requires, or where the judicial process is otherwise subject to abuse may a court permit intrusion upon the grand jury process, and then only after a petitioner has set forth the problem with great particularity. *United States v. Procter & Gamble Co.*, 356 U.S. 677 (1958); *U.S. Industries, Inc. v. United States District Court*, 345 F.2d 18 (9th Cir. 1965), cert. den. 382 U.S. 814; *In re Bonanno*, 344 F.2d 830 (2nd Cir. 1965); *Allis Chalmers Mfg. Co. v. City of Fort Pierce*, 323 F.2d 233 (5th Cir. 1963); *Dennis v. United States*, 302 F.2d 5 (10th Cir. 1962); *United States v. Rose*, 215 F.2d 617 (3rd Cir. 1954); *In re William H. Pflaumer & Sons, Inc.*, 53 F.R.D. 464 (D. Pa. 1971); *United States v. Wolfson*, 294 F.Supp. 267 (D. Del. 1968); *United States v. Tanner*, 279 F.Supp. 457 (N.D. Ill. 1967); *In re Grand*

Jury Investigation, 32 F.R.D. 175 (D. N.Y. 1963); *Commonwealth Edison Co. v. Allis Chalmers Mfg. Co.*, 211 F.Supp. 729 (N.D. Ill. 1962); *United States v. Hortman*, supra. Here, it is contended, there is no such demonstration of "particularized need", only that the information sought is needed, as a final resort, to keep alive a lawsuit that should have been long terminated, by injecting therein, spectres, nothing more, of documents which perhaps should have been (and perhaps were) the subject of discovery long ago, the existence of which Defendants now seek to prove by means of a fishing expedition, using a federal grand jury as bait. This kind of grasping at straws, it is contended, does not rise to the level of particularized need since the grand jury secrecy can never be invaded merely for discovery or monetary purposes. *State of Minnesota v. U.S. Steel Corp.*, 44 F.R.D. 559 (D. Minn. 1968); *City of Philadelphia v. Westinghouse Electric Corp.*, 210 F.Supp. 486 (E.D. Pa. 1962).

Although Defendants would have the Court believe that they are not interested in the grand jury proceeding *per se*, it is not insignificant that John A. Ward, one of the Defendants, has recently been indicted by another grand jury for matters intrinsically related to those which Defendants are now trying to discover.[1] Clearly, a criminal defendant may not use a civil

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1/ The Iowa Grand Jury is invested with broad investigatorial powers into possible federal offenses, may deal with all crimes disclosed by its investigation, and may inquire about and make recommendations about acts related to its investigation which might have taken place outside of its jurisdiction, (Cont.)

proceeding to gain discovery unavailable to him in the criminal case. United States v. Interstate Dress Carriers, Inc., supra. In addition, Defendants are able to here make their assertion about lack of interest in the grand jury proceeding only because they are attempting to do by indirection (deposition of the Assistant United States Attorney assigned to assist the Grand Jury, and deposition of attorneys for witnesses called before the Grand Jury) what they cannot permissibly do directly, subpoena the Grand Jury itself. However, the rules relating to grand jury secrecy are not limited to the grand jury minutes or transcript, but extend as well to documentary evidence presented to it, and grand jury secrecy may not be violated by disclosure of the latter, as well as by discovery of the former. U.S. Industries, Inc. v. United States District Court, supra; United States v. Interstate Dress Carriers, Inc., supra; Application Of The State Of California To Inspect Grand Jury Subpoenas, 195 F.Supp. 37 (E.D. Pa. 1961); United States v. Stein, 18 F.R.D. 17 (S.D. N.Y. 1955). Thus, a statement of the nature of evidence produced before a grand jury, as sought here, is entitled to the same protection as the testimony transcribed. United States v. Hughes, 429 F.2d 1293 (10th Cir. 1970).

1/ (Cont.) including tax fraud occurring in the Western District of Pennsylvania. LaRocca v. United States, 337 F.2d 39 (8th Cir. 1964); Masinia v. United States, 296 F.2d 871 (8th Cir. 1961); Hoban Mfg. Co. v. Russo, 235 F.2d 547 (7th Cir. 1956); United States v. Owens-Corning Fiberglas Corp., 271 F.Supp. 561 (N.D. Cal. 1967).

Far from Defendants' lack of any showing of compelling need for the information which it seeks, the Government believes that examination of the traditional reasons for grand jury secrecy compellingly shows why Defendants' motion should not be granted. Among those reasons are the encouragement secrecy gives potential witnesses to appear and testify without fear of disclosure, the encouragement secrecy gives the grand jury to engage in uninhibited investigation and deliberation, the encouragement secrecy gives witnesses with pertinent information to make free and untrammeled disclosure, the security secrecy gives from subornation of perjury, witness tampering, importuning of grand jurors and, finally, the assurance that secrecy gives of an independent and properly functioning grand jury. *Posey* v. *United States*, 416 F.2d 545 (5th Cir. 1969), cert. den. 397 U.S. 946; *In re William H. Pflaumer & Sons, Inc.*, *supra*; *United States* v. *Projansky*, 44 F.R.D. 550 (S.D. N.Y. 1968). *Hancock Bros., Inc.* v. *Jones*, *supra*. *United States* v. *Badger Paper Mills, Inc.*, 243 F.Supp. 443 (E.D. Wis. 1965). All of these, it is asserted, will be subverted if Defendants are permitted the discovery which they herein seek. Most particularly the free testimony of witnesses, which has been held to be of paramount importance for the protection of grand jury secrecy, *United States* v. *Scott Paper Co.*, 254 F.Supp. 759 (W.D. Mich. 1966), will be undermined, since Armour appeared and fully cooperated upon a promise of full confidentiality. Without this cooperation the Grand Jury's task would have been far more difficult, and if the secrecy of the Grand Jury is in this manner breached, it can legitimately be expected that there will be far less cooperation, and far less free and untrammeled disclosure in future grand jury proceedings. For this reason particularly, and remembering that the discretion of the Court in this area should only rarely be exercised in derogation of secrecy, *United States v. Costello*, 119 F.Supp. 159 (S.D. N.Y. 1954); *United States v. Owen*, 11 F.R.D. 371 (W.D. Mo. 1951), and that the Court should insure that the Grand Jury, an inquisitorial body, should not be, as here, unwillingly drawn into court as an adverse party, *In re Grand Jury Investigation*, 226 F.Supp. 414 (S.D. N.Y. 1964), it is respectfully asserted that the Court should deny the instant motion.

All the foregoing, of course, presupposes the jurisdiction of this Court over this matter at all. In fact, the only connection whatever between this matter and the Northern District of Illinois is that the deponent happens to have his offices there. Since, however, the grand jury is considered an appendage of the Court which convenes it, *Brown v. United States*, 359 U.S. 41 (1959); *United States v. Smyth*, 104 F.Supp. 283 (N.D. Cal. 1952), since responsibility for relaxing the rule of secrecy resides in the court of which the grand jury is a part.

Senator DeConcini. This is a brief in resistance to a motion to compel answers to a deposition. This is filed by Alan Kirshen in USDC for the northern district of Illinois. Are you familiar with that?

Mr. Hultman. You will recall that at the December hearing you raised the issue with me about consolidation. I do not remember exactly what page it is; it is in the record.

At that time I indicated to you words to the effect that I myself—the question was directed to me, as I heard it at that time or at least as I best recall; and my response was to you no, that I did not. I was talking to the very best of my knowledge at that time. I was referring to me, myself, and not trying to just limit it to me; but I thought you were talking to me. But I did not know anything beyond that.

Then you handed me, I believe, this particular exhibit or one to this effect, because it did not go to the end. Maybe I can tell.

My response to you was words to the effect that I remembered something about this being an action or proceeding in Illinois with Mr. Kirshen. This is during the time frame of the "second"—so as to speak—grand jury.

From the time he came into the office in November or December 1972, this case was assigned to him. This was a matter that took place which he handled, and it was a matter with reference to him and other lawyers in Illinois, and the Department, and I do not know where all.

I do not have any knowledge, other than what I now look at and which you showed me that day, about this part. I was not the one involved in it.

Senator DeConcini. You do not have any firsthand knowledge of this exhibit 7?

Mr. Hultman. No, I do not.

The only thing is, as I said to you in writing the minute I got home, maybe I even signed this exhibit.

Senator DeConcini. Reference page 2, the last paragraph—would you read that last paragraph, going up to the first line on the next page? Did you write that, or did you know anything about it?

Mr. Hultman. No, I never wrote anything that is in this document.

Senator DeConcini. Do you remember reading this?

Mr. Hultman. I do not have any independent recollection of it at all, even after you handing it to me that day and I very hurriedly glanced through it.

Senator DeConcini. Let me ask you this question: If you as the U.S. attorney were in charge of the Nard investigation prior to Mr. Kirshen, would it be illogical to think that at least Mr. Kirshen would have advised you that he was going to file this paper.

Mr. Hultman. No, I am not trying to make excuse again, Senator. First of all let me say that the matter was under my jurisdiction, as every case in the office; there is no question about it.

In the first instance, even though Mr. Nard came to me in the beginning, on the first part of the case was at that time an assistant named Robert Sikma. He was the one who had case responsibility in that sense of the word. Then, when Mr. Kirshen came on, Mr. Kirshen did.

Each of us had cases for which we were all responsible. It was such a small office, and I tried a lot of cases myself because I was the experienced trial lawyer. So I would assign specific cases to me. When I say I would—they would get assigned, and I am not necessarily the one who did the assigning; they would come into the office, and the head of the office would assign them out as it looked like our loads were. This case became that of Mr. Kirshen when he came on.

Now, there is no way in the world that I can sit here and say to you which of these documents I saw or I did not see. I do not have that recollection; I truly do not.

Senator DeConcini. Let me ask you this. I am confused. Was Kirshen given the case by you, or was he given the case by Sikma?

Mr. Hultman. I do not know if I can say in a very definitive way. Sikma no longer had the case, and it was assigned. I think you can say I did without any question, because I am the one responsible for the case—all the cases.

Senator DeConcini. Yes, because you were——

Mr. Hultman. Yes—the U.S. attorney.

Senator DeConcini. Do you remember assigning the case to Sikma?

Mr. Hultman. In a very technical sense, no; but he was in the Sioux City office; that is where the records were. He had handled a good part of the original Nard matter; that there is no question about.

I am not trying to say that I still did not have responsibility or that certain things did not come to my attention.

As Mr. Kirshen, I think in response to one of your questions in the earlier hearing, said, my method of operation was this: Since I was not in the Sioux City office and Mr. Sikma was, he was kind of in charge of the day-by-day operation of the U.S. attorney's office in Sioux City. He was the deputy in effect, because I was not there. As a result, as matters would come in he would screen them, he would look at the reports that came in, and so forth, and so on. That did not mean that I still did not have the responsibility. That still did not mean that I did not see certain documents, because certainly I did. But my method of operation was to let that lawyer handle the case, and I would be there as backup in the sense that if we had to go trial or if there was something that I had to do, I would be available to do it. That is the best answer I can give you.

Senator DeConcini. That is fine. That perhaps answers my question. Maybe I should have Mr. Kirshen here because, on your December 11 testimony at page 27, lines 23, 24, and 25——

Mr. Hultman. Page 27, sir?

Senator DeConcini. Yes, sir.

Mr. Hultman. I have got to get the other document.

Senator DeConcini. I understand.

Mr. Reavely, do you have it there?

Mr. Reavely. I have it, Senator. Page 27?

Senator DeConcini. Yes—lines 23, 24, and 25.

You stated there—and I am summarizing now; I can read the whole thing if you like—that this was a matter where Jack Nard had "drug" the Department of Justice into a civil proceeding. Mr. Nard was attempting to obtain discovery from Armour.

Mr. HULTMAN. Yes.

Senator DECONCINI. It was your U.S. attorney's office—Mr. Kirshen in this case obviously—that intervened in this litigation.

I was going to ask you to clarify the statement in this respect, and I presume that your clarification is that Kirshen was handling this case and you were not advised on a day-to-day basis at all, even though you had previously taken charge of the Nard investigation.

Mr. HULTMAN. The reason I took charge in the very beginning was because he came to me.

Senator DECONCINI. Let me ask you this: Did you authorize Mr. Kirshen to intervene in the private lawsuit?

Mr. HULTMAN. Sitting here to respond to you question, Senator DeConcini, I have absolutely no knowledge.

Senator DECONCINI. Do you have any idea why he did it then?

Mr. HULTMAN. No, I do not, other than the fact that, as I said before, maybe right at the very time of this document I would be in a trial in Sioux City, Iowa, for 3 days, 10 days, or whatever it might be. I expected each of these assistants to go forward—I mean, not to come to me; I was not nursing them or anything—to go forward with whatever conclusions or decisions they felt they should make.

At the same time, it may be such that some correspondence that he made was likewise carboned to my office, or maybe he phoned me to talk to me; but I do not have any recollection of any kind of interplay about this event. That is what I am saying to you, and that is the reason that I do not.

Senator DECONCINI. Mr. Hultman, we have a vote that is commencing; and because of my requirements to leave I am going to recess now for approximately 10 minutes. Senator Hatch will be back, and I am sure Senator Grassley will be back. If you will stay here——

Mr. HULTMAN. All right, sir.

Senator DECONCINI. Thank you.

[Recess taken.]

Senator Hatch [acting chairman]. Mr. Hultman, we will resume the hearing.

Mr. HULTMAN. Yes, sir.

Senator HATCH. As I understand it, you desire to go ahead even though I will have to ask the questions and take the testimony. I had preferred Senator DeConcini to do that, but as an accommodation to you I am going to try to get through this with you, if we can today, and get it over.

Mr. HULTMAN. Very good, sir.

Senator HATCH. Senator Grassley has asked that we put Senator Jepsen's statement made on July 31 in the Congressional Record concerning you in the record.[1]

Mr. Hultman, I believe some background is necessary to explain the filing, as I understand it, of this brief by your assistant Mr. Kirshen in a Federal district court. Is that where Senator DeConcini quit?

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[1] Can be found on page 22.

Mr. **Hultman**. I am not sure.

Senator **Hatch**. Was he on the brief?

Mr. **Hultman**. We were back on that a while ago.

Senator **Hatch**. OK. Let me just go through it. It is the brief: In resistance to motion to compel answers to depositions.

Mr. **Hultman**. Yes. That is exhibit 7.

Senator **Hatch**. Yes.

I notice your assistant filed that in Federal district court, not in Iowa but in Illinois. In your office's investigation of Nard's charges that Armour had withheld documents from Nard in the Pittsburgh trial, Mr. Kirshen obtained almost twice as much material from Armour as had been given to Nard in the earlier years.

When Mr. Kirshen informed Nard's attorney of this fact, Nard brought suit under rule 60(b) of the Federal Rules of Civil Procedure, alleging that Armour had fraudulently withheld these documents from Nard.

Nard's attorneys attempted to take the deposition of an Armour attorney as to what material had been given to your office that pertained to the Pittsburgh contract dispute that had not been given to Mr. Nard himself.

Mr. Kirshen, oddly enough, intervened in this private lawsuit to prevent Nard from discovering the very documents which prompted Nard's complaint to your office in the first place.

I would like to read a few sentences from the opinion entered December 21, 1973, in the northern district of Illinois by U.S. District Judge Frank J. McGarr and, I might say, regarding Judge McGarr's characterization of Mr. Kirshen's action or actions: "The Government, presumably motivated by a concern for grand jury secrecy, has interjected itself into this case to a degree and with a zeal that seems to transcend its traditional posture of neutrality and its role in this case as a temporary custodian of documents which are the subject matter of a dispute in a civil case to which the Government is not a party. The time spent writing the Government's lengthy brief, with its request for oral argument, might better have been spent completing the grand jury investigation which has been pending since early 1973 and which was the result of a complaint by Nard in 1971."

On page 27 of the October 11 hearing transcript——

Mr. **Hultman**. I do not have that, sir, but I am listening to you; go ahead. I do not know what you are referring to.

Senator **Hatch**. She [indicating Mr. Hulton's assistant] can give that to you. On page 27 of that transcript, lines 23, 24, and 25—do you have that handy? It is the hearing transcript of December 11.

Mr. **Reavely**. I have got that, Senator. What page?

Senator **Hatch**. Page 27, lines 23, 24, and 25. You stated that this was a matter where Jack Nard had "drug the Department of Justice" into a civil proceeding.

Mr. Nard was attempting to obtain discovery from Armour. It was your own U.S. attorney's office that intervened in this litigation. Would you like to therefore clarify your statement with respect to that?

Mr. **Hultman**. Sir, first of all—you see, I have a transcript that has different pages, and so forth, of that proceeding—I did not recall at the time Senator DeConcini was asking me about this. We got into it by the fact that he was talking about consolidation. He asked some questions about consolidation, and then he showed me the document. It rang a bell, but this had to do with proceedings in Illinois. That is as much as I can recall.

Senator HATCH. In other words, you really did not have anything to do with that?

Mr. HULTMAN. No. Now, that is not again—it is my responsibility; there is no question about it; but Mr. Kirshen had the case at this time.

Senator HATCH. We are not going to beat that drum to death. We made that point earlier, and you graciously acknowledged it.

But, let me just say this: Do you not find it to be a little bit unusual, if not bizarre, to have an assistant U.S. attorney in Iowa intervene in a civil case in order to prevent documents that were crucial to an individual who claimed that he was being hurt as a result of improprieties in his two prior trials?

Mr. HULTMAN. Let me say to you, Senator, in response: Not only is that unusual, but a great many of the things in the *Nard* case were very unusual.

Senator HATCH. You can see why Nard is so upset about it.

Mr. HULTMAN. We were placed, as I said in the other hearing—this is the only case I have ever had in all the thousands of criminal cases that I have handled as a local prosecutor, as a State prosecutor, as an attorney general, as a U.S. attorney, where we had a case that was growing out of civil cases. As you understand as a lawyer yourself, that is a very dangerous position to be in.

Senator HATCH. Surely.

Mr. HULTMAN. And I think you would agree with me, reading as much of the record as there is, that Mr. Nard was using every method he could; and I am not faulting him for that, and I did not at the time; I kept pressing on.

Senator HATCH. Any plaintiff would; any defendant would; any attorney would.

Mr. HULTMAN. I kept pressing on—absolutely.

Senator HATCH. There was nothing illegitimate about his requesting documents that they had refused to deliver or at least had withheld in the prior trials and that might have helped him to win those trials had they been available——

Mr. HULTMAN. Absolutely.

Senator HATCH [continuing]. And which, by the way, under the rules of civil procedure, should have been made available.

Mr. HULTMAN. And I would fight as his counsel to make sure that happened, Senator.

Senator HATCH. And you can understand why he feels the way he does.

Mr. HULTMAN. I cannot address, as I said at that time, this area, because this was handled by Mr. Kirshen; it was handled entirely by him. There may have been something that came to my attention.

Senator HATCH. I understand.

Mr. HULTMAN. As I said to Senator DeConcini after I got home and wrote back, I might even have been the one that put my name with somebody else on it; but that did not mean that I saw it, read it, digested it, and so forth.

Senator HATCH. I understand.

Mr. HULTMAN. And that is not an excuse, again; but that was a formality. When an assistant had certain pleadings, they had to be signed by the U.S. attorney as well as the assistant who was involved.

Senator HATCH. Did you as the U.S. attorney authorize Mr. Kirshen, your assistant, to intervene in this private lawsuit?

Mr. HULTMAN. I truthfully have absolutely no memory, Senator.

Senator HATCH. You do not believe you did, do you?

Mr. HULTMAN. To the best of my recollection, no.

Senator HATCH. But if you had the facts that we have brought out here today, you certainly would not have authorized him to intervene and try and prevent the granting of documents that might help a person who claims that he had been very badly mistreated?

Mr. HULTMAN. Not under general circumstances—absolutely not—but there could be certain circumstances where there would be a reason. One of the problems was, as I have later read here in the last 36 hours—and it may have been the brief itself that you are referring to here—there were some problems being wrestled with there, evidently by counsel, as to whether or not Mr. Nard had a right to documents which Kirshen had gotten through the long arm of the law.

Senator HATCH. There is a difference between getting grand jury documents, and petitioning a court to give them, and another difference between an assistant U.S. attorney from one State going into another State to prevent a private litigant from getting documents he really should have had a right to have.

Mr. HULTMAN. There is no question about that.

Senator HATCH. Then under these circumstances do you not agree that that looks pretty improper?

Mr. HULTMAN. Again, without all the facts in a given situation, you and I——

Senator HATCH. And I am not blaming you for it, because you have said you do not know.

Mr. HULTMAN. All I am saying is that I would look at that very carefully and very closely before I would make a decision to go in.

Senator HATCH. I yield to Senator Grassley.

Senator GRASSLEY. Is not the key here or really what we are trying to get at with this question, did he get involved on his own, or was he getting involved because he may have been requested by people in Illinois to get involved in conjunction with their requests for records?

Senator HATCH. Who in Illinois would request them to come in and intervene in a private matter?

Senator GRASSLEY. That is what I am trying to find out—if there was anything like that.

Mr. HULTMAN. I do not know.

Senator HATCH. You do not know whether Armour & Co. have had any influence on Mr. Kirshen, do you?

Mr. HULTMAN. I absolutely do not, but I can say to you that I have never seen anything that would give me that conclusion. He is a tough prosecutor—maybe too tough at times.

Senator **Hatch**. It looks like he went above and beyond to try and intervene in Mr. Nard's matters, certainly above and beyond any U.S. attorney I have ever seen.

Mr. **Hultman**. Well, that is a judgment call, and I am giving you the best input I can give you.

Senator **Hatch**. You have been very straight on it.

I was going to ask, could you explain why your assistant was intervening in a civil litigation between private parties, intervention which a U.S. district court judge characterized as transcending the U.S. attorney's traditional posture of neutrality? You would have to admit that that was transcending the traditional posture of neutrality, would you not? At least it looks that way.

Mr. **Hultman**. Again, Senator, I cannot sit here and give you as a lawyer—and you would not expect me to, or yourself if I were asking you that question—to give you a conclusion without the total set of facts, the same as you and I disagree very clearly with a certain judge after he looked at all the fraud testimony.

Senator **Hatch**. I agree.

With the facts at your disposal and to your best recollection, you do not see any reason to justify intervening in another State's civil action proceeding, do you?

Mr. **Hultman**. As I have indicated to you, the best answer I can give to you is—because I do not have that much knowledge, as I indicated to you, about what took place at that time—that I would give a very hard look at it. The odds are that I would not, unless there were certain circumstances.

Senator **Hatch**. Senator Grassley?

Senator **Grassley**. Was Kirshen subpenaed or asked to give a deposition by anybody in Illinois?

Mr. **Hultman**. I do not have any idea what the procedure was; I just do not have any idea.

Senator **Hatch**. To the best of our knowledge, it appears as though he just voluntarily intervened in that case, which he had no real interest in intervening in.

Mr. **Hultman**. That would surprise me very much, but I cannot——

Senator **Hatch**. You do not have any other explanation for it?

Mr. **Hultman**. No, and I have no knowledge.

Senator **Hatch**. What would be the Government's interest in preventing a party from finding out if documents had been fraudulently withheld from that party by another party in a civil lawsuit?

Mr. **Hultman**. On that basis alone it would be very difficult for me to figure out the Government basis. On the other hand, you could have a certain stance where a fraud had been committed in the beginning by the party who was seeking it, and that could have a bearing. But I am not speculating anything of that kind here; I am just trying to respond to your question.

Senator **Hatch**. At the December hearing Senator DeConcini asked you several questions about this brief that Mr. Kirshen filed in Chicago, Ill., in the U.S. District Court for the Northern District of Illinois. I would like to refer you to some of your answers.

Mr. **Hultman**. All right, sir. What page are you on?

Senator **Hatch**. I will give you that. I am referring to the following statements on page 26, lines 5 through 21, and page 28, lines 1 through 14. Interrupt me if at any time we are not reading together. Let me just read them so that we all have them.

Senator DeConcini. Did you ever decide to consolidate any of these matters?

Mr. Hultman. Did I—pardon, sir?

Senator DeConcini. Did you ever decide that they could be consolidated or did you decide not to consolidate them?

Mr. Hultman. No, absolutely not. Absolutely not.

Senator DeConcini. I have here a memo prepared by your office and the Brief in Resistance to a Motion to Compel Answers to Depositions. I will show you a copy of that very shortly.

It says in part on page 3, "Nard continued his demand for investigation and prosecution both at the level of the United States Attorney's office and in Washington. It was decided"—this is your office saying this—"It was decided that the matter would be consolidated in the United States Attorney's office in Sioux City to avoid duplication of effort."

Mr. Hultman. My office, on behalf of Mr. Kirshen who is doing it—yes. Go ahead, sir.

Senator Hatch. That is right.

On page 28, Mr. Hultman is saying:

This part was handled by Mr. Kirshen during this time frame to which I am referring.

I accept this as being a fact if he prepared it, and I have no reason to disbelieve that the document that you are saying doesn't purport to say what it says.

Senator DeConcini. You did not have that understanding? Someone else prepared this?

And then you answered:

No, I did not have that understanding. That was not my personal understanding. And then I think this next sentence is very important: I know of no document of any kind that I've ever seen or anything that would indicate it. This would undoubtedly be a matter between counsel, Mr. Kirshen at that time, and this very proceeding that he was involved in.

I would also like you to note your statement on page 21, lines 10 through 17.

Mr. Hultman. OK. That confirms there what I was just trying to say——

Senator Hatch. That you did not know.

Mr. Hultman [continuing]. That it was Mr. Kirshen's matter, and I did not have any knowledge. And I did not recognize the document either—the pleading.

Senator Hatch. All right.

Mr. Hultman. Go ahead.

Senator Hatch. On page 21, lines 10 through 17:

Senator DeConcini. Did you ever investigate the events taking place in Pennsylvania?

Mr. Hultman. All right. Now that is the next thing I would like to discuss.

In your statement that you read—I know of no authorization, I never sought any authorization, and I had no reason to seek any authorization to investigate the matters in Pittsburgh.

Let me go on to another matter.

Mr. Hultman. Could I just respond, sir?

Senator Hatch. Of course. It is the same matter. Maybe this will help you to answer it all.

Mr. Hultman. All right.

Senator Hatch. I would like you to get exhibit number 8.

[Exhibit No. 8 follows:]

HEARING EXHIBIT #8

UNITED STATES GOVERNMENT — DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. [redacted]
CRIMINAL DIVISION - D.J.
Room 402 - Washington, D. C.

DATE: August 7, 1973

FROM : UNITED STATES ATTORNEY
Northern District of Iowa
P. O. BOX 1128
SIOUX CITY, IOWA - 51102

[redacted] Assistant

SUBJECT: ARMOUR & COMPANY v. NARD

Since speaking to you this afternoon, I have learned that I will be served with a subpoena tomorrow morning to have my deposition taken here in Sioux City on Tuesday, August 14th. As I related to you over the phone, this subpoena is in a private civil action in the Eastern District of Pennsylvania entitled Armour & Company v. Nard. This was an action brought by Armour for alleged breach of contract in the construction of a meat packing plant by John A. Nard for Armour & Co. in Pittsburgh in 1967 and 1968. This was a cost-plus contract, and as one element of damage, Armour alleged that Nard had included in the costing out certain materials and subcontractors fees for a house that Nard constructed on his own behalf at the same time. Nard, in turn, counterclaimed for breach of contract by Armour and for wrongful termination. In this action, the Court ruled that both parties were in material breach of contract and gave no award to either, but did award Armour some $280,000 as damages for costs that Nard wrongfully included, stemming from his house construction. The matter was appealed [illegible] and the Third Circuit affirmed.

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Simultaneously, Armour commenced suit in the Northern District of Iowa against Nard for breach of contract in the construction of a packing plant here in Sioux City. Again, Nard counterclaimed for breach of contract. Here, the Court awarded Nard some $160,000 on its claims, and Armour some $120,000 netting Nard approximately $40,000. This action was appealed to the Eighth Circuit, which affirmed the Court's [illegible].

After the two Court rulings, Nard came to this office and to the office of the U. S. Attorney in the Western District of Pennsylvania, alleging that Armour had perjured itself and had suborned perjury in connection with these two cases. Specifically he alleged that Armour had, upon penalty of discharge or transfer, caused its employees to commit perjury with respect to their testimony about Nard's performance on the job. Nard also alleged that various subcontractors were induced to commit perjury upon penalty of not getting paid for the period prior to Nard's termination, with compensation being their retention on the job and work in addition to that originally specified for amount far greater than would be ordinarily reasonable. Before this office would even consider Nard's allegations, we required extensive documentation of his allegations. This was duly provide by Nard over a period of approximately 18 months, and now consis of approximately ten large notebook binders.

After examining this documentation, it was the decision of this office, after consultation with the Department and the U. S. Attorney's office at Pittsburgh, to proceed to a grand jury investigation. This investigation was, in addition, induced by complaints which Nard had made directly to the Depart of Justice and allegations made at the congressional level, primarily in the hearings considering the nomination of Judge Josep Weis, the Judge in Nard's Pittsburgh case, to the Third Circuit.

Before proceeding with a full fledged grand jury, it was our decision to issue a grand jury subpoena for Armour's complete set of documents, so that it could be determined what the further scope of grand jury inquiry would be. Accordingly, a subpoena was issued to Armour on March 14, 1973, returnable on March 21, 1973, for all documents pertaining to Nard's allegations. After consultation with Armour's attorneys, it was agre that, rather than having voluminous documents transported to Siou City, I would be permitted to travel to Pittsburgh, Chicago, and Phoenix, to do a document search and then bring such documents a might prove interesting back to Sioux City for further considera This trip was approved by the Executive Office for U. S. Attorne and in early April I viewed approximately 40 file drawers of documents in the three cities mentioned and Sioux City. From these documents, I culled out approximately 8 boxes which are presentl in my office.

From examination of these documents, particularly the ones obtained in Pittsburgh, it has now become apparent that Jack Nard was extremely selective in which documents he showed u Armour's attorneys were very open with me and were most anxious to let me see all the documentation in this matter, in the appar belief that they would be completely vindicated in so doing. In the course of this examination, I came to learn that the Interna Revenue Service had made some attempt to view these documents earlier, but had been rebuffed.

Upon my return to Sioux City, I inquired of the Internal Revenue Service in Pittsburgh whether they had anything ongoing with respect to Jack Nard. Approximately May 17, 1973, I learned that they not only had a matter ongoing, but were soon going to seek an indictment of Mr. Nard for failure to file inco tax returns and for tax evasion. This tax evasion stemmed from the construction of Nard's house, for which Armour paid under th subpoena is sought has no further viability, due to the fact that the appeal in the Third Circuit is over and the proceeding is terminated. Finally, I would assert that the Federal prosecutor has an absolute discretion to disclose or not to disclose materials in his custody, under the same doctrine of executive privilege presently being raised in Washington.

I think that at a minimum the U. S. Attorney's office in the Western District of Pennsylvania ought to be consulted as to how we ought to proceed, in view of the fact that any disclosures that we might make here in Iowa may jeopardize their criminal proceeding. Furthermore, since the subpoena is issued out of the United States District Court for the Western District of Pennsylvania, that office may be caught in something of a conflict, as may this office be caught in a conflict between any possible criminal prosecution and having to defend itself against this kind of unwarranted intrusion into the affairs of its grand jury. Although you have advised me to proceed, for the time being, at my own discretion, I would very much appreciate having the Department's assistance in this matter pursuant to the provisions of 28 CFR Section 16.28, and would at this time request instructions as to how to proceed, as well as consideration of the possibility of representation in this matter. What I intend to do immediately is move to quash the subpoena on the basis that Section 16.23(c) has not been complied with, and that no statement by the party seeking the testimony has been filed setting forth the summary of that testimony for submission by me to you. This should buy us a few days in which some determination as to how to further proceed can be reached. Although I visited with you about the possibility of seeking to resist Nerd's motion for a subpoena, it is apparent that subpoena has now been issued, and a motion to quash would be in order. Unless I hear from you otherwise, I shall take further steps on the 14th as I deem necessary, including the refusal to answer any questions put to me at that time.

Please let me know as soon as possible how you wish me to proceed in this matter.

[redacted]

Assistant U. S. Attorney

[redacted]/mc

P.S. Since dictating the above, I have had a telephone call from Robert Tyler of Winston and Strawn in Chicago. He is Armour's Attorney in this matter, and informs me that he has been subpoenaed for Monday, August 13, 1973, to testify about the same points sought from me. Mr. Tyler was with me during the Grand Jury document search, and was equally privy to the information turned over to the Grand Jury by Armour. In the belief that Mr. Tyler's disclosures would procure for Nard by indirection what he could not obtain directly, and that they would likewise come under the umbrella of grand jury secrecy, I have, on my own authority, requested that if Armour approved he decline to answer questions with respect to Armour's testimony before the Grand Jury or Armour's disclosure of documents to the Grand Jury. Mr. Tyler agreed not to answer, such that Nard will have to obtain a Court Order in the Northern District of Illinois (where Tyler's deposition is to be taken) to compel Tyler's testimony. This should give us time to make a determination as to what steps ought to be taken, if any, to protect Mr. Tyler's testimony. In this regard, it is my strong recommendation that we tale all necessary and appropriate steps to protect the Grand Jury and the Pittsburgh criminal action by guarding Mr. Tyler's testimony as well as my own. Armour agrees with this, apparently, and I would therefore ask Departmental direction as to how to proceed in this regard, as well as whether to proceed in these premises.

Forgive the terrible typing on this last page. The girls are at lunch and I wanted to get this out.

Senator HATCH. This is a memorandum from the office of Kirshen to the Criminal Division, dated August 7, 1973. I would like to draw your attention to the following sentences: On page 1, the first sentence in the third paragraph; on page 2, the first two complete sentences.

Now if you will read that first sentence in the third paragraph one page 1——

Mr. HULTMAN. Would you let me just catch up with you?

Senator HATCH. Sure. Tell me when you are ready.

Mr. HULTMAN. All right. Where did you say on page 2, Senator?

Senator HATCH. Paragraph 3.

Mr. HULTMAN. That begins with the words "Before proceeding * * *"?

Senator HATCH. No, it starts here: This is page 1. It says, "After the two court rulings"——

Mr. HULTMAN. Yes.

Senator HATCH [continuing]. "Nard came to this office and to the office of the U.S. attorney in the Western District of Pennsylvania alleging that Armour had perjured itself and had suborned perjury in connection with these two cases."

Then on the next page, starting with the last sentence in paragraph 1 and then the first sentence again. In the second paragraph it says—Kirshen, I take it, signed this letter—"Before this office would even consider Nard's allegations we required extensive documentation of his allegations. This was duly provided by Nard over a period of approximately 18 months now consists of approximately 10 large notebook binders. After examining this documentation it was the decision of this office, after consultation with the Department and the U.S. attorney's office at Pittsburgh, to proceed to a grand jury investigation."

Are you familiar with this memorandum?

Mr. HULTMAN. No, I am not. As I recall from the hearing that day when Senator DeConcini gave me this document, it has to do with again with Alan Kirshen; and it is in the time frame, again, at the time that he has the case—August 7, 1973.

Senator HATCH. Did you authorize Mr. Kirshen to send this memorandum to the Criminal Division? If not, was it your practice as U.S. attorney to allow your assistants to have really what someone called "unfettered communication" with the Department?

Mr. HULTMAN. The answer to your first question is that it would have meant a rarity when I would have been consulted to specifically authorize something to go forward, because I have enough confidence and I think it is the only way you can operate in a very small district like mine with only two or three or four at the most, assistants, and you are off trying a case 200 miles away, and you do not see this particular assistant maybe for 2 or 3 weeks. You cannot expect him to wait on you.

As Mr. Kirshen said in his testimony that day, my method of operation—and it has been that in my private practice with those lawyers who work for me as well as in the military as a trial judge advocate—to give individuals responsibilities and to expect them then to go forward to handle them.

In answer to your question: One, I did not specifically authorize this document. In fact, I do not even remember seeing the document. That does not mean that maybe a copy was not sent to me, or even maybe he consulted with me something about what was going to go in the document he prepared.

Mr. Kirshen was one who was a very extensive writer. As you can see here and from other matters that were in the file, he wrote very extensively in briefs and so forth. He was one who did extensive writing.

The second answer to your question is that that responsibility was that of the assistants that had the case at the time, and I relied on them for it.

Senator **Hatch**. As U.S. attorney, would it not have been your responsibility to have consulted with the Department of Justice concerning the grand jury investigation of events taking place outside of your own district or jurisdiction? Here he is consulting with the Justice Department about events taking place in Pittsburgh.

Mr. **Hultman**. Again, Senator, I left the consultation in any given case——

Senator **Hatch**. Even something that unusual, asking for jurisdiction?

Mr. **Hultman**. Again——

Senator **Hatch**. I accept your statement; you do not have to go over it.

Senator **Grassley**. Mr. Chairman?

Senator **Hatch**. Yes, Senator Grassley?

Senator **Grassley**. I think I ought to make a point here that Mr. Kirshen in 1973 could have written this, but he refers to things that happened prior to the first grand jury, which would have been prior to Kirshen's time on the staff.

Mr. **Hultman**. Senator, I think I have found an answer to your question, or at least a partial answer, which I had to go back and find, and not because I had private knowledge of this, but this is Mr. Kirshen's testimony; and I have to go back to the only record I have got, which is the little copy of the hearing that day.

On page 73, this is Senator DeConcini, at the bottom: "Now are you saying Main Justice became involved in preparing this?" So it was he and Main Justice that were involved.

Then Mr. Kirshen: "Because I had been subpenaed to testify."

Now you asked me whether or not he voluntarily went ahead. It appears to me from his response here that he had been subpenaed. I believe U.S. attorneys and their assistants ought to respond to subpenaes in Federal courts the same as any United States citizen ought to.

Senator **Grassley**. The point is that Kirshen is referring to the negotiations with the Department, but he was not involved in those negotiations because he was not on the staff at that time. He is writing about things that happened prior to the first grand jury.

Mr. **Hultman**. Yes; but at the same time he is also talking about events that are coming up to bring the case up to date at that time. The Senator's question to me was this: In effect, he was out on a frolic on his own, or words to that effect. And I had no knowledge of that.

But in the record it is clear why he was there. He was not there on a frolic of his own; he had been subpenaed by the court to be there.

Senator HATCH. You will find, if you read the record and if you look at it, that Kirshen and Tyler—the counsel for Armour—were both subpenaed because Nard wanted Tyler to give these documents, and he also wanted Kirshen to give the documents. Kirshen had the documents, and all of a sudden Kirshen winds up intervening in a civil litigation in Illinois to prevent giving up the documents.

I do not know of any case of that kind of unusual quality, and you have admitted yourself that is a very unusual circumstance.

Mr. HULTMAN. But your question to me was, what was he doing there? He was there at the response of a subpena of the court.

Senator HATCH. One thing I am concerned about: Even though you say you do not know about this memorandum from Mr. Kirshen, why would your office consult with the Department of Justice about conducting a grand jury investigation of matters outside of your district if it was not to obtain their authorization over those matters?

Mr. HULTMAN. I do not know specifically what you are referring to now.

Senator HATCH. To the memorandum by Mr. Kirshen that we have just been discussing—the August 7 memorandum.

Mr. HULTMAN. OK. Now you are referring to exhibit No. 8?

Senator HATCH. Let me give you a little more information. Kirshen's memo here states that Nard's documentation consisted of 10 large notebook binders. We have those same binders today, and 8 of those 10 binders deal exclusively with the Pittsburgh issues alone.

In addition to consulting with the Department of Justice about another jurisdiction, why did you require Nard to submit documentation on his Pittsburgh allegations if you were not in fact investigating them?

Mr. HULTMAN. I am not sure that I required Mr. Nard, sir—in response to your question—to do anything. I do not even think there was ever a subpena issued to Mr. Nard.

Mr. Nard was an individual who was individual from the very beginning; who was the mover and continued to be the mover, and continued to try and get anybody and everybody involved in what his civil cause first was, and anything—as you pointed out a little bit ago—to support what his problems were as he viewed them in certain instances in that civil area. So that is the best response I can give to you.

In the beginning—as Senator DeConcini and I went over this morning—he came to my office with reference specifically to a given case of perjury in the Iowa trial.

Some of these FBI documents, that I have now seen as of Monday afternoon—I was mistaken in my response to Senator DeConcini that I knew nothing or nothing had been brought to my attention as far as Pittsburgh was concerned.

But the thrust still in the first phase was on Iowa; and the thrust here has to do with Kirshen and gets in, as I said in my testimony before and again today—Kirshen got into a much wider spectrum, without any question.

Senator HATCH. Let me say how far he got. On page 3 of this document——

Mr. HULTMAN. Of which document now, sir?

Senator HATCH. The same memorandum.

Mr. HULTMAN. OK.

Senator HATCH. Kirshen goes on to say, in the third paragraph on page 3:

> It is my strong recommendation that none of this information be provided to Mr. Nard, particularly in view of the pending criminal proceedings in the Western District of Pennsylvania. Documents which we produce may unduly assist Mr. Nard in his defense, going well beyond what would be required under the Federal Rules of Criminal Procedure.

I wonder if you would agree with that this is not a violation of Justice Department policy. Here Kirshen is denying Nard documents he needs for his defense in a criminal case—in a so-called criminal case. Would you have done that personally?

Mr. HULTMAN. Pardon?

Senator HATCH. Would you have done that personally?

Mr. HULTMAN. Again, I am not going to be placed in the position of making Monday morning quarterback determinations about matters of which I only know a piece here and you only give me this much, when you and I know in a lawsuit it is a mass of things that you ultimately make decisions on.

The one thing I can say to you is that it is apparent from looking—at least as I saw these records to the extent I had the time on Monday, and maybe it is in some of the exhibits here that have been in the reports—that he was in contact directly with the Department of Justice at this time.

The events that he is talking about, the events that are taking place, the decisions that are being made, are being made by Alan Kirshen and the Department of Justice.

So if those decisions—as you are asking me to rule on without me knowing all of the details—were wrong or were bad judgment, then the Department and he were in the same bed at that time.

Senator HATCH. That is right. You have broken the code.

One thing I am asking is, can you think of any reason that would justify an assistant U.S. attorney, or a U.S. attorney, or the Department of Justice, in denying documents that would be essential to the defense of a criminal matter, that are available in a civil trial unrelated to the jurisdiction that the U.S. attorney has to exercise, in a civil case, from an alleged defendant in a criminal case brought by the Internal Revenue Service?

Mr. HULTMAN. Certainly the general answer to that question, Senator, is "No."

Senator HATCH. I cannot think of any.

Mr. HULTMAN. I can see where there could be some exceptions at a given time, as I said, where you have got a fraud involved to get the documents in the first place.

Senator HATCH. Sure.

Mr. HULTMAN. I can also see an exception where the individual who is making the demand is not in the posture legally to make that demand.

Senator HATCH. But neither of those exceptions is here.

Mr. HULTMAN. I do not know, because I am not that familiar with what all took place here.

Senator **Hatch**. This memorandum states that your office, after consultation with the Department of Justice in Washington and the U.S. attorney's office in Pittsburgh, Pa., proceeded to a grand jury investigation on Nard's allegations in both Iowa and Pennsylvania.

How do you reconcile your statements of December 11, that your office was not authorized to look at both cases and you did not consolidate both cases, unless you say you just personally were not aware of it? And that may be your answer.

Mr. **Hultman**. First of all let me say, Senator--and again it is too bad that Senator DeConcini was here part of the time and you are here part of the time——

Senator **Hatch**. I apologize for not being here, but I just could not. As a matter of fact, we are going to have to recess for a half hour in just a minute—and this may be the last question—until I can get back, but I am willing to try to accommodate you, even though I had planned on leaving by about 6.

Mr. **Hultman**. Part of the problem here was that when somebody says "consolidation" to me—that is a very technical term. As a lawyer, you understand.

Senator **Hatch**. You know what we are talking about here—the combination of both cases under one U.S. attorney's jurisdiction.

Mr. **Hultman**. Let me finish, if you would, sir.

Senator **Hatch**. Surely. I apologize.

Mr. **Hultman**. I could not remember anything about consolidation when the question was asked of me, with no time to get ready, no documents, and so forth.

It is obvious as I answered the question that day—once I had seen this document that we are now talking about—it explains that Alan Kirshen, the assistant, and somebody in Pittsburgh, and somebody at the Department of Justice had had discussion about consolidating cases.

Senator **Hatch**. You are saying you did not know about it?

Mr. **Hultman**. I am saying that I have no recollection of any kind. Now there may be something somewhere, as again I have tried to indicate. If there is something in the documents somewhere that would indicate somebody sending a note to me or a letter to me, then at that time I did have at least that knowledge. But as I said here then and as I sit here now, no, I cannot recall anything of that kind.

That does not mean, by any stretch of the imagination—because the things were so intertwined, by its very nature you would have to get into other matters. It was not a nice matter where an event takes place out in Iowa and the players in the event are altogether different players than they are in a similar event in Pittsburgh.

Many of the same people are all intertwined; the same kind of matters; two contracts overlap each other. So by their very nature you just could not put the two in a nice hole and deal with only one and not have any relationship to the other.

Senator **Hatch**. Mr. Hultman, the reason I am directing these questions to you is that you were directly responsible for Mr. Kirshen's actions as an assistant U.S. attorney.

Although you only had a four-man office compared to three-man offices in many areas of this country in major areas, do you not agree that you bear some degree of responsibility for his action?

Mr. HULTMAN. Senator——

Senator HATCH. I might also add that you have had access to these documents, and they even seem new to you today.

Mr. HULTMAN. That's not——

Senator HATCH. They are not new today?

Mr. HULTMAN. That is not what I am observing to you at all. The documents that we are talking about in this big mass I saw for the first time yesterday afternoon since whatever time they were in my file 4, 5, 6, 7, or 8 years ago.

Senator HATCH. You have had since December to look at them. I admit it is your right to decide when you are going to look at them, but I am just saying——

Mr. HULTMAN. Senator, without the bill of particulars or whatever you want to call it, the report that I got on Monday noon—up until Monday noon this week——

Senator HATCH. It did not go into all these matters?

Mr. HULTMAN [continuing]. I do not know what the events are that you are concerned about. I mean that in a very generic sense of the word, not in a, you know, one, two, three, four, five. Once I knew, I have now responded and done my very best, but for me to go to files—as a lawyer, you understand this: Until you know what you are looking for you are not accomplishing very much by just going and looking generally.

Senator HATCH. Let me go a little bit further. This issue was also raised by your office intervening in Nard's 60(b) lawsuit in Pittsburgh.

Mr. HULTMAN. Yes.

Senator HATCH. Nard's 60(b) lawsuit in Pittsburgh was to reopen the Pittsburgh civil litigation based on Armour's fraud at the time of the trial. The documents Mr. Kirshen obtained from Armour related directly and primarily to the Pittsburgh litigation. That is why Nard's attorney wanted to depose the Armour attorney who gave the documents to Mr. Kirshen.

Does not this fact fly in the face of your previous statements that Nard's Sioux City and Pittsburgh allegations were not consolidated and jointly investigated by your office?

Mr. HULTMAN. I am not following you now. What statement have I just made that things were not consolidated?

Senator HATCH. Let me just ask this one more question.

Mr. HULTMAN. Could I respond to the general flow of questions you have been asking me here?

Senator HATCH. Sure.

Mr. HULTMAN. Again, I have to refer—because that is what I had and what I secured on my own—to the transcript of the hearing of the Committee on the Judiciary in December.

On page 75 in the fifth paragraph, it sets out there in a memorandum that is the one we are now referring to that—I am reading from it now:

> Furthermore, nondisclosure would seem to be required in order to preserve the secrecy of the grand jury process and to ensure in future cases the full cooperation with the grand jury that makes that body so effective. If grand jury documents were

allowed to be produced in any civil proceeding the efficiency and integrity of the grand jury would be greatly compromised.

This at least is one of the reasons that is projected. Again, I am not saying to you that since I was not the one involved personally—and I take the responsibility as U.S. attorney for everything that takes place in my office, and I have no qualms about that.

What I am saying to you is that there were reasons set forth, and whether or not those reasons are good enough in your mind or in mine, that is the same thing again that lawsuits are fought over and why issues come forth.

Senator HATCH. I understand.

Let me ask you this, Mr. Hultman: The documents which Nard sought from Armour existed independently from your own grand jury investigation. Nard had really sought them in discovery 3 years earlier. They were therefore not documents protected by rule 6(e), as Judge McGarr pointed out.

This committee in the past 2 years has obtained documents from the Department of Justice under the same circumstances, and this issue has never been raised. I am thinking specifically of the Uranium—Cartel grand jury documents.

Do you mean if a grand jury subpenaed a set of the "Encyclopedia Britannica" the "Encyclopedia Britannica" would thereafter be nondiscoverable material under rule 6(e)? You know what I am saying, do you not?

Mr. HULTMAN. Sure. I understand clearly what you are saying.

Senator HATCH. If I understand you, what you are saying is that if you had known directly about this, you would have given him the documents.

Mr. HULTMAN. I am saying, if these were the circumstances limited in scope and just to the extent we are talking about, I probably would have made a different decision, as evidently you would too.

Senator HATCH. That is right.

Mr. HULTMAN. But again I am not saying—I do not want to try and Monday morning quarterback again—in the eyes of the Department of Justice, whoever it was at this time that was involved——

Senator HATCH. Who cares? If a person is being mistreated and abused, and certainly treated dishonorably by the Justice Department, that is the time that an assistant U.S. attorney or a U.S. attorney has to stand up and say, "Hey, wait a minute; we are not going to withhold these documents," whoever the guy at the Justice Department is.

Mr. HULTMAN. Absolutely.

Senator HATCH. If you were Mr. Nard sitting there, having been defeated in a trial partially because you could not get the documents that were in existence that they deliberately withheld, knowing that another court had decided that they had withheld documents, knowing that this company had a reputation for doing that, and you knew that there was an assistant U.S. attorney who had obtained them, how would you feel?

Mr. HULTMAN. There would not be any questions about what my actions would be, or yours. The facts are, going out of that proceeding, Mr. Nard got all that, did he not?

Senator HATCH. The facts are that he ultimately did—yes.

Mr. **Hultman**. That is what I am saying.

Senator **Hatch**. But after a great deal of saying, and after the fact, and after everybody—the media and everbody else—is saying that he deserved to lose because, by gosh, two district courts or two appeal courts ruled against him, you know. Let us face it, those are not arguments if he did not have the facts and did not have the documents.

Mr. **Hultman**. Yes, but that evidence which he then got was later used in a very hearing, and it was ruled on by a judge.

Senator **Hatch**. Not in a full trial hearing. It was again a short-shrift hearing. Unfortunately, the judge is no longer with us, as I understand it.

Let me ask you this: Do you need a break? Would you like a break?

Mr. **Hultman**. I would go ahead and move on, if it is all right with you.

Senator **Hatch**. Here is my problem: I need to be gone for about 15 minutes to a half-hour. If this is a convenient time to break, or if you would like to go just a bit longer—why don't we go another 15 minutes, and then if I could, I would take that break.

Mr. **Hultman**. Fine, sir.

Senator **Hatch**. I am sorry about it, but it is just the pressures that we have around this place.

Senator **Grassley**. Without consulting with either you or Mr. Hultman, I want to throw this out for a suggestion. Would it be possible that we could have the questions submitted and his answers in writing and then sworn statements in answer?

Senator **Hatch**. I think I would prefer to ask the questions, but we are moving pretty well.

If you can keep your answers brief, I will try and keep the questions as brief as I can.

Mr. **Hultman**. I had better because I have got a cold.

Senator **Hatch**. I understand. Let us go until 4 o'clock, and I will try to be back as quickly after as I can. I have canceled everything else in my schedule. There were two things I just could not cancel. One was an ambassador whom I had to meet. In fact, I have got to cancel a meeting with another ambassador, but we all have our problems.

I want to accommodate you, and I surely do not want you to have to stay here 2 days if we can get through with it today. We do have a lot more to go through though.

Please give Mr. Hultman exhibit No. 9.

[Material follows:]

HEARING EXHIBIT #9

March 13, 1973

FBI - Omaha, Nebraska
Attn: SA Bill D. Williams

Alan H. Kirshon, Assistant

This office is presently conducting an investigation with reference to possible perjury in the cases of Armour & Co. v. Scott, et al, No. 6[illegible]-1372, in the Western District of Pennsylvania, and Armour & Company v. Ward, No. 68-C-3043-W.

Although the primary means of investigation in this case will be in the Grand Jury, it is at this time necessary to have a background investigation on a William K. McKavis, 1930 Cypress Lane, Northbrook, Illinois. Mr. McKavis is Senior Project Engineer with Armour-Dial Inc., 111 East Wacker, Chicago, Illinois. We are particularly interested in Mr. McKavis's credentials as an Engineer, especially with the Corn Products Company prior to his association with Armour. His Supervisor at that time was Mr. W. V. Brome, and the address of Corn Products Company is [illegible] Arch Street, Argo, Illinois, 60501.

As our investigation before the Grand Jury continues, it may be further necessary from time to time to request additional limited investigations, however, we hope to minimize these as much as possible.

Thank you for your kind cooperation.

AHK/mc

Senator HATCH. This exhibit No. 9 is a memorandum dated March 13, 1973, from Assistant U.S. Attorney Kirshen to FBI Special Agent Bill Williams in the Omaha, Nebr., FBI field office. Are you familiar with this document, Mr. Hultman?

Mr. HULTMAN. No. Again I have no independent recollection.

Senator HATCH. I notice there is an H in the upper right-hand corner. Is that your initial?

Mr. HULTMAN. Let me say unequivocally, without any question, that is not my initial. I take great offense with a conclusion——

Senator HATCH. We are not concluding anything. I am just asking.

Mr. HULTMAN. In the report, sir, that was handed to the press, it says that is my initial.

Senator HATCH. You are saying that is not your initial?

Mr. HULTMAN. If someone were responsible to prepare a report, to make a point that I had seen this document because my initial is on it, without asking me or finding out from somebody if that is my initial, I do not think that is being fair, Senator.

Senator HATCH. That is why I am asking you, Mr. Hultman. I want you to have that opportunity.

Mr. HULTMAN. I am glad you asked. It is not my initial.

Senator HATCH. The first paragraph notes the case numbers of Nard's civil trials with Armour in both Pittsburgh and Sioux City, if you will notice. Does Mr. Kirshen's reference to "this office" mean the U.S. attorney's office for the northern district of Iowa?

Mr. HULTMAN. I am not quite sure whether I am following you, sir.

Senator HATCH. This is the letter from Mr. Kirshen.

Mr. HULTMAN. Yes. I am just trying to find what you are referring to.

Senator HATCH. I might add that this document with the H on it was found right within your own files.

Mr. HULTMAN. Sir, again let me explain, I am in no way saying that this document or any of these documents was not in my file—when I say "my file," the U.S. attorney, northern district of Iowa.

When this case ended up, the various files—and I am not saying at the very end, but prior to the end I needed the things in the third grand jury that were involved here. So any documents that were involved, basically, sooner or later would come into my files in the Waterloo office.

What I am further saying is that this could well be and probably is the file copy which would be made—and again I am sorry you were not here when Senator DeConcini was, or maybe I said this with you both here—with it being a circuit like it was, documents would come into the main office in Sioux City, Iowa; and when the documents would come into the Sioux City, Iowa, office they in a number of instances would be copied as a matter of routine and a copy put in a reading folder or file folder. I think that is what this is.

Senator HATCH. All right. When it refers to "this office," that does mean your office?

Mr. HULTMAN. Yes. And I am saying this is not my handwriting; that H is not my handwriting, very definitely.

Senator HATCH. All right. I have gotten that.

This document does indicate that your office was conducting a perjury investigation of both the Sioux City and Pittsburgh allegations of Mr. Nard and that you were aware, or at least your office was aware, of such a consolidation.

I suppose that the reason you said you know of no document of any kind that you have ever seen that would indicate a consolidation is because you feel you have not seen these documents.

Mr. HULTMAN. No. What I said was back in the first hearing. I went through this or tried to go through it. What I said at that time is that to my knowledge, as I sat here on that day, I had not.

I am not saying here today—I mean, these documents were in the file; they do not bring anything new or additional back to me. What I am saying to you simply is that at this time Alan Kirshen was handling the matter; he had quote unquote in that memo with the Department of Justice in Pittsburgh people consolidated; and I do not have any argument with that now once I have seen the files, but I am not from any independent memory concluding that; it is what it clearly indicates.

Senator HATCH. Let me further clarify this issue, and I would like to refer to your statement in the December 11 hearing transcript on page 22, lines 11 through 16.

Senator DeConcini asked you if you had ever investigated the events taking place in Pittsburgh, and the following was your answer, on page 22:

> The answer is that he continually tried—and I tried to make it very clear to him that only to the extent that items in terms of the allegations of perjury with reference to the Sioux City trial, and where they might intermesh or the factual problems come together, naturally you would pursue those. They would be a normal outgrowth.

This March 13, 1973, memorandum from Kirshen to the FBI is to request a background investigation on one William McKavis, Armour's chief engineer on the Pittsburgh meat processing plant. William McKavis never worked on the Sioux City job, nor did he ever testify at the Sioux City trial. In fact, William McKavis really had nothing whatsoever to do with the Sioux City trial of Nard's Sioux City allegations.

Therefore, does this authorization of an FBI background check on William McKavis reconcile with your December 11 statement that the only Nard Pittsburgh allegations you looked at had to factually intermesh with Sioux City?

Mr. HULTMAN. What I was trying to say and what I am still trying to say to you today is that at the time of this hearing I was focusing in on first—and that is what I thought we were in at that point—the events prior to the time that Mr. Kirshen takes the matter over.

When we get into the time, as you keep on going with the questioning here, he then asked me: "Well, when did you get involved then with Pittsburgh?" as I recall the questioning.

Then we get into the point where we are then talking about Pittsburgh matters and the fact that Alan Kirshen is the guy getting more deeply involved in Pittsburgh matters. If you keep on reading the transcript a little farther, I believe that is the way it flowed.

So I am not in any way saying that we did not get involved at a certain time. In fact, that was during the Kirshen period; there is no question about that.

Senator HATCH. Remember, in your prior testimony you said absolutely not.

Mr. HULTMAN. And I am saying to you, Senator, in no way am I trying to say anything different than what the facts are.

Senator HATCH. You can see why Senator DeConcini and I were concerned.

Mr. HULTMAN. I do not have any quarrel with that. I was doing the very best I could on the short notice I had on events that happened 5 to 10 years ago and I had not seen any of the documents in the interim.

Senator HATCH. You mentioned the difficulty of looking at the cases, where they were so "intertwined;" that was your term here today. Yet in no sense of the word "intertwined" was William McKavis or did he have anything to do with Sioux City. That is the point that I think is a pretty important point.

Here is your principal assistant U.S. attorney asking for an FBI background check on William McKavis after saying that he had consolidated the case jurisdiction.

Mr. HULTMAN. But this is in March 1973, sir. This is not 1971 or 1972; this is March 1973 when Alan Kirshen is deep in, as I said in my testimony. That is when we got into the Pittsburgh matters and when Alan Kirshen got deeply—or words to that effect—in the Pittsburgh matters.

If I can find the transcript I will read that part to you, and I think it might clarify.

Senator HATCH. All right.

Senator GRASSLEY. That is on pages 47 and 48.

Mr. HULTMAN. I cannot quite find it here.

Senator GRASSLEY. It is on pages 47 and 48 of the printed hearings.

Mr. HULTMAN. This is earlier, Senator. That is the time we were talking about with Senator DeConcini this morning.

We go on, and you get into the point where I indicate that in the second grand jury is when Alan Kirshen gets into the Pittsburgh matters. What I was referring to in depth—like you are asking me at this particular time.

Senator HATCH. All right.

Assuming that you did not know about those matters, let me go through a few other things that indicate that Mr. Kirsh[illegible]n at least knew what was going on as your principal assistant.

In exhibit No. 10—and I would direct, without objection, that all exhibits be placed in the record as they occur in the discussion and in the questions and answers.

[Exhibit No. 10 follows:]

HEARING EXHIBIT #10

May 24, 1973

Mr. Thomas Deley
Assistant United States Attorney
Western District of Pennsylvania
633 U.S. Post Office & Courthouse
Pittsburgh, Pennsylvania 15219

Dear Tom;

Re: Jack Nard Investigation

This letter will confirm our conversation of May 23, 1973, in reference to Jack Nard. To summarize what I have told you over the phone, this office has been carrying on, in fits and starts, an investigation of Jack Nard's allegations of perjury committed by Armour and Co. in connection with civil trials in Pittsburgh and Sioux City. These trials concerned construction of meat packing plants in the two cities by Nard for Armour. Nard was terminated by Armour midway through both projects, and litigation ensued. It has been Nard's consistent contention that the verdicts in the two trials were obtained through the use of perjured testimony on behalf of Armour and the subcontractors on the jobs. Nard contends that as an inducement for their perjury, the subcontractors were paid for their work under Nard and were permitted to remain on the job. He further contends that Armour personnel were either explicitly or implicity induced to follow the company "line" in order to keep their jobs.

This case came into the office long before my appointment. Nard has, since the beginning, provided documentation for his allegations. I was assigned this matter last December, and have commenced to look into it more thoroughly, primarily through examination of documents. It now seems to be the case that the documents which Nard showed us, and which induced our investigation, were carefully selected from among those available. It was the feeling of the office however, that the matter should be fully pursued in view of the fact that Nard has continued to make his allegations at the Congressional level.

About a week ago, it came to my attention that the Intelligence Division of the Internal Revenue Service might have something going on Nard. Since he is our complainant, whatever information has been developed would be most pertinent in our assessment as to whether to proceed further with this investigation. If they have developed a strong case, it would appear to me to completely undermine Nard's assertions here in Iowa. On the other hand, I have examined a great body of material, and it may well be that I could perceive some flaws in the I.R.S. case, and thereby assist you in your prosecution. (On the other hand, I may even be able to make some suggestions that would further strengthen an already strong case.) It may be further true, as I indicated, that my conclusions after examination of documents looking for perjury, may have a direct bearing on your prosecution. (I doubt this.)

At any rate, what I am asking at this time is the o opportunity to have and examine a copy of the investigative summary prepared by the I.R.S., together with the list of exhibits that has been submitted to you. I know that the exhibits are probably voluminous, but I believe that I probably already have most of them in my files. Once I examine this, I may be able to save myself a great deal of time and effort pursuing what would later appear to be a chimera. Thank you in advance for your assistance, and if you have a minute later on, drop me a line from time to time and let me know how the prosecution is coming along.

Very truly yours,

EVAN L. HULTMAN
United States Attorney

By

Alan H. Kirshen, Assistant

AHK/js

Senator HATCH. This document was found in your files. It is another memorandum from Assistant U.S. Attorney Alan Kirshen to Assistant U.S. Attorney Thomas Dailey in the western district of Pennsylvania, dated May 24, 1973. Are you familiar with this memorandum?

Mr. HULTMAN. Again I am not, sir. This is in the period that we are talking about when Mr. Kirshen——

Senator HATCH. All you have to say is that you are not familiar, and I will presume it is in that period.

Mr. HULTMAN. Yes. I mean, other than the fact that I have seen it in the course of the last 36 hours.

Senator HATCH. OK, and we will presume that.

Mr. HULTMAN. And it could well have been in my files of course back at that time.

Senator HATCH. In this memorandum in the first paragraph Kirshen states that, "This office has been carrying on an investigation of Jack Nard's allegations of perjury committed by Armour & Co. in connection with civil trials in Pittsburgh and Sioux City."

Mr. HULTMAN. Yes.

Senator HATCH. It goes on to say, "It has been Nard's consistent contention that the two verdicts in the two trials were obtained through the use of perjured testimony." I think, again, that shows that at least Mr. Kirshen knew.

Mr. HULTMAN. Yes, and that would confirm what he says in that memorandum.

Senator HATCH. It also confirms that your office had consolidated the two matters into the Iowa jurisdiction.

Mr. HULTMAN. Sir, I am not trying to be fancy or anything here. What I was saying back at that time, with the little time of preparation and so forth in response to his first question, was that I do not remember and I did not remember at that time any what we call formal consolidation. That is all I was trying to indicate.

Senator HATCH. But all I am trying to indicate is that Mr. Nard was right and nobody has really taken the time to believe him—except apparently Mr. Kirshen—that the action was consolidated out there.

Let me give you a couple of other illustrations.

I think this memorandum does not fit your December 11 testimony that the only perjury allegations that Mr. Nard made were those against William Bossenberger, the engineer who was really in essence censured by his own society.

Mr. HULTMAN. What are you reading now, sir?

Senator HATCH. I am not reading anywhere; I am just making that comment—that I think this conflicts with your contention that the only perjury allegation he was interested in or that he asked to investigate was Bossenberger's.

Mr. HULTMAN. No, we are at totally two different timeframes, sir.

Senator HATCH. All right.

Mr. HULTMAN. Bossenberger is in the beginning—Engineer, I am sorry. Engineer is in the beginning; I mean in the very beginning.

Senator HATCH. You are saying it went beyond that later then?

Mr. HULTMAN. No question about it.

Senator HATCH. And you knew that it went beyond Bossenberger?

Mr. HULTMAN. At a given time as they were intertwined and at a given time, yes. But in response to the question, I am talking about a formal—when he asked me that question, whether or not I recalled any formal consolidation, and I did not. That was an honest answer to the question.

Senator HATCH. But as I recall your prior hearing, you indicated that Bossenberger was the only one you were looking into.

Mr. HULTMAN. If I gave that impression in the whole time of the grand jury, then that is clearly a misconception and I did not mean to infer that at any time.

Senator HATCH. OK.

Mr. HULTMAN. Bossenberger—the engineer is the thrust in the very beginning.

Senator HATCH. It went way beyond Bossenberger, did it not?

Mr. HULTMAN. It sure did, and there is not any question of that.

Senator HATCH. And you knew it.

Mr. HULTMAN. No question about it.

Senator HATCH. Apparently Mr. Kirshen knew it.

Mr. HULTMAN. In grand jury No. 2 it clearly went, and in between those times there were also matters in terms of reports, observations, and so forth. As I said, if you had been here when Senator DeConcini and I went through this, I think we got it very clear. There is not any question about that.

Senator HATCH. Let me give you exhibit No. 11.

This is a telephone message to you from Mr. Nard, transcribed by your office, dated March 8, 1972.

Mr. HULTMAN. Now we are back before the first grand jury.

Senator HATCH. Right. Are you familiar with this document?

Mr. HULTMAN. I recognize the document as being my handwriting, and I recognize a couple of things on it—yes.

Senator HATCH. These are your initials in the upper right-hand corner on this one?

Mr. HULTMAN. No. Again, they are not my initials, absolutely not.

Senator HATCH. Whose are they?

Mr. HULTMAN. I cannot tell you. It is somebody who evidently or probably took the phone call and then did the routing. It does not make any difference, Senator. I am just saying to you that those are not my initials; clearly they are not mine.

Senator HATCH. OK. But it does say "ELH" in the upper right-hand corner.

Mr. HULTMAN. Yes, it does.

Senator HATCH. You are saying that is not your handwriting. Those are your initials?

Mr. HULTMAN. Yes. Let me clarify: One, these are not my initials; I did not put the initials there. I am sure whoever put them there indicated that this document should come to me.

Senator HATCH. OK. Is it not those who put them there in the prior document? Is that not their indication that that document should have come to you?

Mr. HULTMAN. I tried to make that very clear, and that is the case. It is a file matter, and it is a file copy that goes into my file.

Senator **Hatch**. You have said these are your handwritten notes on various parts of this page?

Mr. **Hultman**. Yes, I would say that; yes.

Senator **Hatch**. Your first grand jury was held March 20, 1972; and this message predates that first grand jury by approximately 2 weeks; is that right?

Mr. **Hultman**. The way we operate is that the grand jury takes up all the cases that we have got to take up at that time. It does not indicate in any way that this matter would take the whole grand jury time.

Senator **Hatch**. All I am trying to establish is the chronology. It was about 2 weeks before your first grand jury?

Mr. **Hultman**. Yes, yes. Now I am with you.

Senator **Hatch**. Three of those listed witnesses were involved only in the Pittsburgh litigation. They had nothing to do with the Sioux City trial.

Why was Nard supplying names for your grand jury which had nothing to do with the Sioux City litigation on a sheet that you acknowledge you had and that you wrote handwritten notes on? How does that square with your testimony that the other allegations of perjury and the other difficulties only occurred when Kirshen took over the matter during the second grand jury and during that 1973 period?

Mr. **Hultman**. It squares very square, to be very frank about it. That is simply this: This list was made, again, by the person who took the telephone call from Jack Nard. Jack Nard would give you lists of things that he wanted to do and names of people very often.

You will see also that he says down here—it is very obvious that I do not know much about this list—if you will read the bottom, it says, "He has the proper questions prepared and will call you later today or, if you would rather, wherever you are staying tonight."

This is a voluntary call by Jack Nard to my office. He talks to a secretary, gives a list of names, and leaves a message, "I'll tell you what this list is all about when I call you."

Now, let us take it one step further. There are some handwritten notes, as you said; and in that phone conversation, whenever it did take place—and it might not have been that night or some other time—I listed, as I figured from what he had to say to me, the witnesses that ought to be called as far as this grand jury and this issue; and they were these:

One of them was a fellow named Zaremba—at the bottom of the page—two was a fellow named Jack Nard, who was essential to everything; he is the one that is involved.

Senator **Hatch**. Was Zaremba the one you listed?

Mr. **Hultman**. No, I didn't list anything. These are from the phone call, from the followup. Then I numbered, because it became obvious to me, in looking at all of the names that he had called and talked about. Now what I am doing is relying on memory recollected—that I indicated on this sheet what the No. 1 and No. 2 witnesses were that I ought to call, growing out of my conversation and what we were looking into at that time.

One of them was D. E. Zaremba. Two was George Keller. You see the number 2 right beside it?

Senator **Hatch**. Yes.

Mr. HULTMAN. And then three, John Nard.

As I look at this list, those were the three people.

Senator HATCH. Those were the ones you felt you had to call?

Mr. HULTMAN. Those were the ones I felt I needed to call at this time, growing out of the conversation.

Senator HATCH. For the first grand jury?

Mr. HULTMAN. Yes.

Senator HATCH. I might point out to you, both of those were Pittsburgh ones.

Mr. HULTMAN. Pardon?

Senator HATCH. Both of those were Pittsburgh ones.

Mr. HULTMAN. No. I am talking about with reference to Jack Nard, to Zaremba, and Keller, and what he is saying to me that ought to be called in that order—one, two, three.

Senator HATCH. But I am saying, those witnesses had only to do with the Pittsburgh trial. If this was not consolidated and you had nothing to do with the Pittsburgh trial during the first grand jury, why are you calling the Pittsburgh witnesses? Why are they so important?

Mr. HULTMAN. Yes, well, it is not quite that simple. He gave these names to me, in leaving them and asking me, in priority, of people that I should call on this particular matter.

That is the very best recollection I can give to you at this time; and I am talking about the thrust, which was the engineer; and I think all of the documents here clearly show that is what the thrust was in the first grand jury.

I am not saying he did not supply me with other names—as it does indicate here—of other times and places, that do have to do with events that are intermeshed, one, and also maybe, as you characterize them, events which are clearly Pittsburgh.

I cannot recall or from this I cannot decipher the conclusion you just reached. I am not saying it is an invalid one. I am just saying I do not draw that same conclusion.

Senator HATCH. The reason we have that here and the reason we are reminding you about it is that Zaremba, Keller, and a number of others on this list were strictly involved in the Pittsburgh case.

What that shows, Mr. Hultman, as you are well aware, is that you were investigating that case as well even with the first grand jury with regard to perjury.

Mr. HULTMAN. Senator, that is not the conclusion. I just cannot separate, as Jack Nard gave to me back at this time, the narrowness.

Let us take the engineer for example. You cannot just leave him as far as witnesses in the State of Iowa and what took place there. By Nard's allegations, he is talking about other people allegedly being involved in what that transaction was: Who secured him, who paid the bill, et cetera, et cetera, et cetera.

Senator HATCH. I know a lot about the case. The only time I have ever heard of Mr. Zaremba is basically with regard to the Pittsburgh case. Maybe you can show otherwise. But maybe we can clarify this.

Mr. HULTMAN. Let me also note that in one of your exhibits that was presented here the official grand jury list for this particular hearing is entitled "United States of America versus one single person"—if that does not again indicate to you what the thrust was at this particular time—and that is all I am saying.

Senator HATCH. I admit that, but Nard never knew that. He thought you were investigating all the perjury in both trials, and your records indicate that, although you have indicated you did not know that Mr. Kirshen was doing that as of 1973.

Mr. HULTMAN. No, we are not communicating with each other at this point.

Senator HATCH. All I am saying is: Does not this list prove or show that you were looking at Pittsburgh at that time? That is the whole point of the list.

Mr. HULTMAN. No, it does not. That is not what it shows.

Senator HATCH. Even though you listed Zaremba as No. 1?

Mr. HULTMAN. It is not as I would conclude it or as I view it—no. Now I am not saying somebody else might not conclude that, but when you look at all of the documents that have to do with the beginning of the case and the first grand jury, you will find that the statements in the FBI reports indicate that a given primary case is the one. In fact, the FBI reports, Senator—if you will go to those that are in those exhibits—likewise are entitled in the name of "U.S.A. versus" a certain individual.

Senator HATCH. That is fine, but all we are saying is that you admit that, with names that you were investigating, a number of them were from Pittsburgh and two of the most important were involved in the Pittsburgh case.

Let me push on to another issue, because I think you have said all you need to say on that, and I understand your position. Let us look at exhibit No. 5.

In order to clarify this issue further I would like to point out some of the names on this March 4, 1972, telephone message, which is handwritten notes of the Nard investigation.

For instance, you list 27 potential witnesses in these handwritten notes. Of the 16 names which are on the March 3, 1972, telephone message from Nard, 10 of those names—Scranton, Contouras, Proston, Keller, Ashton, Novak, Trautman, Hartel, Zaremba, and Drain—are also found in these handwritten notes.

It seems to me there must have been some basis for Nard's supplying you with potential witnesses involved in both the Sioux City and the Pittsburgh cases, and of the first 12 potential witnesses——

Mr. HULTMAN. Sir, can I interrupt?

Senator HATCH. Sure.

Mr. HULTMAN. I think our problem is this: We are talking about a case that went through three grand juries. As I have been trying to explain, in the first instance, in the very beginning we were zeroing in on one single individual. That was in the beginning.

As time went along, as those reports you read a second ago by Mr. Nard—he says the same thing in that exhibit. He said first he came in in Pittsburgh and talked about one particular subject. Then later he comes and talks about other subjects, and so forth. He set out—in that report a little while ago that you referred to me—that same sequence. This is the sequence that took place.

As I have tried to explain, the thrust in the first was one individual. There were names given, and there undoubtedly was information given concerning other witnesses, as we just talked about on this exhibit.

Mr. Nard is one—and you know him—that pushes with information and so forth. You do not shut him off or turn him down very easily.

When we get to the second grand jury and we get to the deep involvement in terms of Mr. Kirshen, that is when it is an expansion into Pittsburgh.

If you will look at the report date you will see that in hearing exhibit No. 1. Also, I do not know—and I do not know whether you indicated to me—what the date is of hearing exhibit No. 5. I do not have any idea, Senator, what time hearing exhibit No. 5 is—whether this is 1975 or whether this is 1974. It would be in a late time frame; that is what I am saying to you.

Senator HATCH. All right.

Mr. HULTMAN. This would not be in the beginning—no question; this would not be in the beginning.

Senator GRASSLEY. Mr. Chairman?

Senator HATCH. Yes, sir?

Senator GRASSLEY. On pages 66 and 67 of this printed document, Zaremba, on February 18, 1971, wrote a letter to Judge McManus in Cedar Rapids, Iowa. Would that not be a reason for his involvement?

Mr. HULTMAN. You might just conclude that, because that is part of the reason we are all here, Senator; there is not any question about it.

In the trial in Sioux City, Zaremba wrote the letter about events that are happening in the trial in Sioux City and impacting on the trial. Thus, when you say he does not have anything to do with the Sioux City trial, that is—and I understand what you are saying—that is part of our problem.

Senator HATCH. But what I am pointing out is that of the first 12 potential witnesses listed in your notes, 7 are subcontractors on the Pittsburgh job who have nothing whatsoever to do with——

Mr. HULTMAN. And this is at a later time, and I agree with you there.

Senator HATCH. OK.

Senator GRASSLEY. Let me speculate here. Could this be a reason why there might be other names from Pennsylvania on this list?

Mr. HULTMAN. Very definitely, because there were many witnesses in the first trial in Sioux City, way beyond the people that just worked or did something in Sioux City. All of the leadership, et cetera, came from and was involved in Sioux City. That is why I say they are so intermeshed that it is very difficult to separate them out.

Let me also point out to you, sir, if you will look at your hearing exhibit No. 1—I think the FBI, when they go with a case, point out what the thrust of the case is and who it is they are after, et cetera. You were getting into that one in quite detail.

I bring to your attention what the name of the subject is. It is the name of the engineer. This is the front page—the thing that I am looking at. I think that indicates very clearly, along with everything else, what the thrust was at that time.

Senator **Hatch**. But keep in mind that most of these names were subcontractors in Pittsburgh who were concerned only with the diversion of funds theory.

Mr. **Hultman**. Yes.

Senator **Hatch**. Frankly, I do not see any intermeshing at all; but let us move on to another area now.

Senator **Grassley**. I would like to say for the record that as far as Zaremba being on the list, his letter to McManus—and it is right here in the committee's documents—shows reason enough for an interest of your office in Nard having suggested the name to you.

Mr. **Hultman**. The other thing I might point out is, if you will recall in some of that either testimony or report——

Senator **Grassley**. I would like to say, therefore Zaremba's name does not prove that you were investigating cases in Pittsburgh.

Mr. **Hultman**. I was also going to say that—if you will recall part of Mr. Reynolds' problem that he referred to about his not being able to find cases or he could not find files—the reason, as it turned out, Senator, was that the Bossenberger file—I am sorry about the name—the engineer—it was a separate file, and it was in the Sioux City office. That is where he came up with it. So that was clearly the thrust in the beginning.

Senator **Hatch**. I have to admit, when you look at this and you see Mr. Kirshen, after you stated in the prior hearings that there was no consolidation—absolutely none—that you were not interested in the Pittsburgh matter, there was no intertwining, no intermeshing, that literally you were only investigating the Sioux City problem; and then all of a sudden we see all of these documents that show that your office was not only involved but probably improperly involved by going to Illinois—and I do not think probably, but improperly involved; we might as well call it what it is—and you, before the second grand jury, before Kirshen got this, had all of these Pittsburgh witnesses, including Zaremba who did testify as to perjury and was an employee of Armour & Co. who could testify——

Mr. **Hultman**. Senator, let us not mix lists of witnesses here. We talked about exhibit No. 11.

Senator **Hatch**. I am talking about exhibit 11 right now.

Mr. **Hultman**. OK, and I explained to you the only names, as I got them from Nard, as I interpreted to the best of my recollection——

Senator **Hatch**. One and two were two Pittsburgh people. Admittedly, Zaremba could have——

Mr. **Hultman**. John Nard is a key witness in anything literally any time, and I think you would admit that.

Senator **Hatch**. Let me move on to another issue.

I should have been to this appointment at 3:30. Senator Grassley, I hate to have you wait, but I just have to do this.

What I would like to do is recess, and I will try to be back within a half-hour. That will give you a little bit of time to relax and collect your thoughts. Then I will come back, and we will try to plow through this and get through it all. Is that OK?

Mr. **Hultman**. Yes, sir.

Senator HATCH. Then we will recess for approximately a half-hour.

[Recess taken.]

Senator HATCH. Mr. Hultman, are you ready to go?

Mr. HULTMAN. Yes, I am ready.

Senator HATCH. I apologize to you for that delay, and I certainly apologize to Senator Grassley; I know it has been inconvenient to him too.

Mr. Hultman, at the December 11 hearing you stated that your office had no participation in Nard's income tax prosecution. I would like to refer you to your statement on page 41, lines 8 through 12.

At that page you say:

> Any allegations of any kind that Jack Nard has made concerning any participation by the Office of United States Attorney in the Northern District of Iowa and the criminal prosecution are absolutely total fantasy on his part.

I would like to refer you to the May 24, 1973, Kirshen memorandum to Assistant U.S. Attorney Thomas Dailey which we have already discussed. Please note the first paragraph on the second page. I would like to read the first four sentences:

> About a week ago it came to my attention that the Intelligence Division of the Internal Revenue Service might have something going on Nard. Since he is our complainant, whatever information has been developed would be most pertinent in our assessment as to whether to proceed further with this investigation. If they have developed a strong case, it would appear to me to completely undermine Nard's assertions here in Iowa. On the other hand, I have examined a great body of material, and it may well be that I could perceive some flaws in the IRS case and thereby assist you in your prosecution.

Do not the representations made by Mr. Kirshen under your name imply that there was participation by your office in Nard's tax prosecution in Pennsylvania, especially since Kirshen asked the Western District of Pennsylvania if he could assist them?

Mr. HULTMAN. It is going to be a little tough—my voice. So if I am too gravely here and you cannot understand me, sir——

Senator HATCH. Mine is getting bad too.

Mr. HULTMAN. After having an opportunity to review the documents, Senator, I have no disagreement with your observation. My testimony at that hearing was to the best of my knowledge. To the best of my knowledge I stated what it was.

Once I have seen the documents indicated, it is obvious that Mr. Kirshen—this is during the period of Mr. Kirshen—did have some participation. So to that extent my observation was incorrect, because I simply did not have that knowledge.

Senator HATCH. OK. The date of this memorandum is May 24, 1973.

Mr. HULTMAN. Yes, but when I say yes—from those exhibits it would indicate he has some contact; and I do not know, other than what those documents indicate, anything beyond that.

Senator HATCH. You can see, Mr. Hultman, why Mr. Nard gets upset; and I think you can see why Senator DeConcini and I—and others, I might add—have gotten pretty upset, when you state that any participation of the office of the U.S. Attorney in the northern district of Iowa in the criminal prosecution are absolutely total fantasy on his part.

Mr. HULTMAN. And to my knowledge, sir, that is exactly right.

Senator HATCH. But you are acknowledging today that with this new additional information it is very apparent that your office was involved in it?

Mr. HULTMAN. No. All I am saying is what those documents indicate; that is still all that I have any knowledge about—with reference to that.

Senator HATCH. All right.

Mr. HULTMAN. One second, sir.

[Mr. Hultman consults with counsel.]

Mr. HULTMAN [continuing]. Oh, yes. I would add one further item which I think would be of interest to you and in fullness of that question.

My counsel did talk to Kirshen after I had seen the documents on Monday at the Department, and his observation was that he did not then, beyond what was stated here in those documents, have any further participation of any kind. In other words——

Senator HATCH. You felt that was the end of his participation?

Mr. HULTMAN. That is what he indicated.

Senator HATCH. That is what he has told you. You do not know one way or the other though?

Mr. HULTMAN. No; I do not know.

Senator HATCH. OK. The date of this memorandum is May 24, 1973; and Mr. Nard was indicted for income tax evasion 2 months later, in July 1973. I would also like to refer you again to the brief filed by Mr. Kirshen in the Federal district court in Chicago.

Mr. HULTMAN. Yes.

Senator HATCH. Mr. Kirshen filed this brief in Chicago on October 3, 1973. I would like to read from page 5 the first three sentences from the first full paragraph:

> While the above was going on, several other developments occurred. First of all, John A. Nard, one of the Three Rivers partners, was indicted by a Federal grand jury in the western district of Pennsylvania on July 15, 1973. This indictment and the upcoming trial are based upon an independent investigation conducted by the Internal Revenue Service and also upon matters brought to light by the Iowa investigatory grand jury.

Kirshen's brief says Nard's indictment in the western district of Pennsylvania of course was based on, as I have said, matters brought to light by the Iowa investigatory grand jury.

I just suggest to you that those two documents do indicate that your prior statement, although made sincerely I suppose at that time, was incorrect.

Mr. HULTMAN. Yes, and that is what I am so indicating, sir.

Senator HATCH. OK.

Mr. HULTMAN. But I am also saying to you that that information there is the sole source of my knowledge. I do not know anything more about it.

Senator HATCH. So you do not know to what extent Mr. Kirshen got involved in the tax issue?

Mr. HULTMAN. Other than that I did, as a result of this and those documents, have my counsel call, because I was very much interested. I wanted to be able to respond as fully as I could to you.

Senator HATCH. We understand.

Mr. Hultman, the scope and depth of your investigation into Nard's allegations are of course the most critical issues before this committee. It has been his allegation from 1971 to the present that Armour officials in both the Sioux City and the Pittsburgh trials committed perjury, that Armour & Co. suborned perjury in both trials to use against him, and that Armour counsel fabricated the diversion of Armour funds theory used against Nard in the Pittsburgh trial.

It was this same diversion of Armour funds theory that was relied upon by the Internal Revenue Service to prosecute Nard for income tax evasion.

Let me refer you to some of your statements. On page 16, line 24, to page 17, line 10; and then page 46, lines 9 to 14. Let us start on page 16, beginning with line 24:

> Senator DeConcini. What I would like you to address, if you can, in some detail for the committee is the efforts you took to investigate the allegations of Mr. Nard, including but not limited to the convening of the grand jury.

Mr. **Hultman**. Sir, I am sorry; I still have not found 17, because I am working off a different transcript.

Senator **Hatch**. It is page 16.

Mr. **Hultman**. Page 16? All right.

Senator **Hatch**. Page 16, line 24.

Mr. **Hultman**. All right. Go ahead; I am sorry.

Senator **Hatch**. Your response was, "Yes."

"Because of the issue itself"——

Mr. **Reavely**. Are we still on the report?

Senator **Hatch**. We are on page 17 right now.

Mr. **Hultman**. What are you reading now?

Senator **Hatch**. Starting with line 24—that is where I started. Are you looking at where it starts with "Senator DeConcini"?

Mr. **Hultman**. OK. At the bottom of page 16.

Senator **Hatch**. I am now at line 5.

Mr. **Hultman**. OK.

Senator **Hatch**. Because of the issue itself, as I say, being that of perjury, I made a very careful analysis of the transcripts and the analysis of the testimony and as Mr. Nard projected it to us and what his complaint was.

> The grand jury concluded that they did not feel that there was a violation of the Federal statute of perjury.

Now, on page 46—and of course you have said you made a very careful analysis, et cetera, of the transcripts and of the testimony—starting with line 9:

> Senator DeConcini. Getting back to the grand jury, the judgment of your experts in your office is that perjury may have been committed. Was that the focus of the grand jury?
>
> Mr. Hultman. Purely. Purely that, in all my proceedings with the grand jury.

Now you said you made a very careful analysis of the transcripts sent to you by Mr. Nard, and I have here volume 1, pages 1 through 90, of the Sioux City trial transcript. The first Armour witness to testify at that trial, Clifton Cox, is the same Armour official who Nard alleged to the Pittsburgh FBI had committed perjury in his Pittsburgh pretrial deposition.

On page 41 of that transcript I would like to read down through the portions underlined by Mr. Nard and sent to your office. That is found in hearing exhibit No. 14.

[Exhibits No. 13 and No. 14 follow:]

HEARING EXHIBIT #13

CAPS

Richard Thornburgh, Governor of Pennsylvania, was interviewed at his office in Harrisburg, Pennsylvania by Michael Murphy and David H. Noznesky on September 18, 1979.

He recalled that he first met Nard when he was the United States Attorney in Pittsburgh. It is possible that Nard may have been sent to him by John Heinz and it was in reference to the Armour lawsuit. Thornburgh spoke with Nard for a brief period and then referred him to Henry Barr. Later the tax case was referred to Pittsburgh and it went to Tom Dailey. Thornburgh said that he had no involvement with the tax case but did recall that Nard's house was involved in it. He believed that Barr ceased any inquiry when he learned of the Iowa investigation.

Thornburgh said that he would see Hultman from time to time at U. S. Attorneys' conferences, but he never had any substantive discussions with him relative to the Nard matter. He described his contact with Hultman as semi-social and said that it mostly consisted of his asking Hultman how that Nard case was coming and Hultman's rolling his eyes and shaking his head. He did not have any discussions about this case with Tom Jackson, Armour, or anyone else.

He also stated that he had no involvement with Nard's pleading in the tax case and never heard that a plea agreement had been worked out by Hultman. Thornburgh knew nothing about the gun case except that Dailey mentioned in passing that Nard had been arrested by ATF. He also had no involvement with the Weis appointment or with Hultman's assignment to Wounded Knee.

Thornburgh went to the Department of Justice in July, 1975. He had no recollection of being involved in an investigation. He was certain that he was never formally interviewed by anyone at Justice about Nard. He knew Mary Wagner, but could not recall whether he discussed the Nard case with her. Neither could he recall discussing it with Rudy Guiliani. Thornburgh never had a discussion with Hultman about ending the Grand Jury investigation and no one ever pressured him to do so.

Thornburgh did say that he is fearful of Nard because of his possession of weapons and because he feels Nard is distrubed. He was upset that Nard berated his wife on a plane trip between Washington and Pittsburgh. He described Nard as a classic paranoid schizophrenic who has developed an intricate pattern of delusion concerning his persecution. He did not feel that Nard ever supplied a motive for the large conspiracy against him.

James Seif, Thornburgh's Adminstrative Assistant, sat in on this interview as did Jay Waldman, who acted as counsel.

HENRY G. BARR was interviewed at the Pittsburgh field office, United States Secret Service, on September 27, 1979, by Michael F. Murphy. He is the Director of the Pennsylvania Justice Department's Division of Criminal Law Enforcement. He was an Assistant United States Attorney in Pittsburgh.

In 1971, he believes, he was a new assistant and Thornburgh sent Nard to him. He met with Nard three or four times. Initially, his focus was on perjury in the Iowa trial. Later he began to talk about the Pittsburgh trial. Barr spoke to Hultman who told him he was looking at the perjury allegations.

About the second or third visit, Nard began to talk about Judge Weis being corrupt. Barr said that he had tried cases before Weis and believed that he was highly competent and honest. So he told Nard to have his attorney, David Buerger, contact him with specifics concerning Weis. Buerger may have called him on the phone, but he did not feel that he supported Nard's claims about Weis. Barr did not feel it was proper to have further invovlement in a pending court case.

Barr stated that his meetings with Nard covered a period of three to four months although he may have had later phone conversation with Hultman. His impression of Hultman was that he probably had little Grand Jury experience and little criminal experience. Nard never mentioned to him that Armour and IRS were going to attempt to make a tax case against him. Barr had no involvement in the tax case or the pleading. He had heard about the gun case but was not involved in that either.

He characterized Nard as "a disingenous person." Barr was not under any pressure to end his contact with Nard. He said that he made an independent determination not to continue.

VOLUME I HEARING EXHIBIT #14

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF IOWA

WESTERN DIVISION

Armour and Company, a Corporation,
Plaintiff,

vs

John A. Nard,
Defendant.

No. 68-C-3043-W

TRANSCRIPT OF TESTIMONY

Courtroom
United States Courthouse
Sioux City, Iowa
February 1, 1971

The above-entitled matter came on for hearing pursuant to assignment at 1:10 p.m.

BEFORE:

Hon. EDWARD J. MC MANUS, Judge, and a jury.

APPEARANCES:

CHARLES R. WOLLE & GERALD M. KRAAI, Attorneys, Sioux City, Iowa, appearing for plaintiff.

DAVID B. BUERGER & THOMAS THOMPSON, Attorneys, Pittsburgh, Pennsylvania, and ROBERT R. EIDSMOE, Attorney, Sioux City, Iowa, appearing for defendant.

Q Who authorized the termination of that contract within the Armour organization?

A I did.

Q And on whose recommendations did you base your decision?

A This was on the recommendation of Mr. Hartel through the operations division.

Q And what was the reason or what were the reasons that you decided to terminate the contract on November 21st?

A Lack of progress in following the schedule as outlined in the contract. We were behind, the work was behind. It was not being done and that he would recommend termination.

Q Following termination what did Armour and Company do about completing the work on this project?

A We took over the work and sent some of it out and got another contractor to finish it.

Q What was the contract that finished - completed the work necessary to the facility?

A Mr. W. A. Klinger, Sioux City.

Q And I believe you have already testified as to the date that the plant started operation as a cut.

A Yes.

Q That was December 29, 1969.

A Yes.

Q Mr. Cox, does the written agreement, Plaintiff's Exhibit A, here, have reference to work performed prior to

Mr. **HULTMAN.** This would also indicate, Senator, that you cannot extricate the case in Sioux City—and that is the point I was trying to make—from these various witnesses; and you are now indicating that. I just wanted to make that clear in my response. Go ahead.

Senator **HATCH.** Mr. Cox is testifying here that Armour terminated Nard's contract because of lack of progress by Nard on the Sioux City contract. You would agree with that?

Mr. **HULTMAN.** Yes.

Senator **HATCH.** I would now like to refer you over to page 50 of this same transcript of Mr. Cox's testimony at the Sioux City trial. In the middle of page 50 of this transcript Nard has a sentence underlined and the notation "Check Zaremba deposition. Somebody is lying."

In Nard's note to you in this transcript he is telling you to check Zaremba's deposition. You would agree with that?

Mr. **HULTMAN.** Yes, and that is why I said to you again let us go back—that Zaremba was important, coming out of the trial that happened in Sioux City, Iowa; and again this indicates it very clearly—yes.

Senator **HATCH.** He was in both cases.

Mr. **HULTMAN.** Yes, but you said to me that they did not have anything to do with it. Go ahead, sir.

Senator **HATCH.** I understand. Nard is referring in that note to Daniel Zaremba, the Armour project manager on the Sioux City job. I do not know how I got mixed up on that.

Mr. Zaremba was interviewed by two Secret Service agents about this case on August 24, 1979, in Pittsburgh, Pennslyvania.

I would like to read the first paragraph of their notes of that interview, and that would be hearing exhibit No. 15.

[Exhibit No. 15 follows:]

HEARING EXHIBIT #15

DANIEL ZAREMBA was interviewed by Michael F. Murphy on August 24, 1979, at Room 2858, U. S. Steel Building, Pittsburgh, Pennsylvania.

When he was subpoenaed in 1972, Hultman asked him for general background information. He got the impression that Hultman wanted opinions and information from someone objective. There were only a few questions from the Grand Jurors and Zaremba never felt that perjury was the focus of the inquiry. He could not recall whether a court reporter was present during the Grand Jury session.

Zaremba stated that Nard antagonized people because he did not follow corporate procedure. He went around people to the president. Nard was a one man operation and it made it difficult to deal with Armour and vice versa. However, Zaremba did not feel that there was any effort to sabotage Nard. There was some inefficiency but this was not a prime factor in Nard's problem. Zaremba felt that he simply underbid the project and operated on a shoe string. Zaremba was a Project Manager and Engineering Manager for Armour at the time of the Pittsburgh Project.

Zaremba was subpoenaed to a 1973 Grand Jury. He was not sure if Hultman was there. He was not interviewed and was released without explanation.

Zaremba left Armour in 1970. He has not had any contact with them since then and no one made any effort to influence his Grand Jury testimony.

Senator HATCH. Do you have that?

Mr. HULTMAN. Yes, we do.

Senator HATCH. OK. Daniel Zaremba was interviewed by Michael F. Murphy on August 24, 1979, in room 2858, United States Steel Building, Pittsburgh, Pa.

I think the appropriate part is that when he was subpenaed in 1972 Hultman asked him for general background information. He got the impression that Hultman wanted opinions and information from someone objective. There were only a few questions from the grand jurors, and Zaremba never felt that perjury was the focus of the inquiry.

Why do you suppose Mr. Zaremba told the Secret Service that perjury was not the focus of your inquiry in the grand jury?

Mr. HULTMAN. I do not have any idea, except it is 9 years later; and, second, if you will look at what Mr. Nard says—and I cannot get to the pages because I have got to go back to the only document that I have got—in the first hearing I was given a list of witnesses, and on page 60 there is a name, "Daniel Zaremba; he knows it all." There are other witnesses here. It states by Mr. Nard what it is they are going to testify to.

When he gave me this information, that is where I started from all the time.

It is very obvious if you read what Mr. Nard says here and also what Mr. Nard told me that Zaremba would say back at that time; he did not tell me what Zaremba ultimately does say here in this affidavit. Zaremba did not feel that there was any effort to sabotage Nard. That is what he says in the interview that you are referring to, so he cannot be too bad a witness in terms of terrible things that happened to Jack Nard back at this time.

Now to get to the point that you are asking me, further, I read very carefully all of the testimony of Mr. Zaremba at the various times and places in wherever his testimony was. I remember there were some affidavits in particular, and I do not remember much more than that, but there were a number of items of evidence of testimony of Mr. Zaremba. I also interviewed him.

He also indicates in this particular exhibit that you are referring to that this is his conclusion at this particular time. He got the impression—if you will take the sentence before that you just read—that Hultman wanted opinions and information from someone objective.

I think that is very critical and very important for a prosecutor and for an investigative grand jury—that they look at witnesses and try to get opinions and information that are objective. That is the sentence immediately before the one that you read to me.

That is the best explanation I can give to you, and that ties into the issue of prosecutorial responsibility.

Senator HATCH. I see.

When you went back and said you read from the hearing exhibit 15 Zaremba did not feel that there was any effort to sabotage Nard—I think he was talking about the contract.

Mr. HULTMAN. I am talking about what he said.

Senator HATCH. I am talking about his perjury and Zaremba's testimony that he was prepared to testify as to perjury but did not think that that was the focus or thrust of your question.

Mr. **Hultman**. Well, this is 9 years later; and I am just referring to the total testimony from him and how it relates to other places. I am saying to you that if that is his recollection—and I do not have any argument with that—that was not my approach as I was going at him at that time.

Senator **Hatch**. Daniel Zaremba was the only witness before your first grand jury in March 1972?

Mr. **Hultman**. That is correct, sir.

Senator **Hatch**. Considering you had been in contact with Nard for more than ½ year and had that much time to assemble evidence——

Mr. **Hultman**. The issue at that time was the issue of perjury; and the issue was concerning the events that took place in Sioux City and in particular with reference to a given expert witness, as you point out in exhibit No. 21 of your exhibits.

Senator **Grassley**. Mr. Chairman, where does it say here in exhibit number 15 that Zaremba was prepared to testify about perjury?

Senator **Hatch**. I think it is implied there. All he says is that he felt that perjury was the focus of the inquiry: "There were only a few questions from the grand jurors since Zaremba never felt that perjury was the focus of the inquiry, which was what I understood he was there to testify to." And that is what you have just said he was there to testify to.

Mr. **Hultman**. Pardon?

Senator **Hatch**. Is that not what you said—that Zaremba was there to testify to perjury?

Mr. **Hultman**. He was there to testify in the case of Bossenberger—I am sorry—the engineer—as is clearly pointed out in your exhibit 21.

Senator **Hatch**. Let me further clarify some of the issues regarding the appearance of Mr. Zaremba before the grand jury. Mr. Cox testified, as we have just read, that Nard's contract with Armour was canceled because of Nard's delay on the Sioux City job.

Nard told you to check Daniel Zaremba's deposition, and I would now like to refer you to a statement you made in December regarding a letter from Mr. Zaremba to U.S. District Court Judge McManus who presided over the Sioux City trial. That is page on 47, line 22, to page 48, line 5, and then on page 29, lines 1 through 3.

Mr. **Hultman**. All right, sir.

Senator **Hatch**. On page 47, line 22:

> Senator **DeConcini**. Mr. Hultman, referring now to the grand jury and the investigation in relation to February 8, 1971, a letter to Judge McManus, did you ever subpoena Armour counsel Raymond Gass to ask if the Armour suit was brought in Sioux City strictly for purposes of harassment? Do you recall?
>
> Mr. Hultman. No, I do not. That I do not.
>
> Senator **DeConcini**. Do you recall why you did not or decided that was not——
>
> Mr. **Hultman**. To my knowledge, Mr. Chairman, I have never seen this letter before in my life. In fact, I would feel very confident that I've never seen this letter.

Mr. **Hultman**. I am sorry; I guess I am not following the same.

Senator **Hatch**. Before I ask you several questions about this letter——

Mr. **Hultman**. But you have jumped; you have jumped to something, Senator, now. That is not the continuation on 48, as I read it here.

Senator **Hatch**. This is a continuation of the discussion about Zaremba.

Mr. **Hultman**. Pardon?

Senator **Hatch**. I am continuing a discussion about Zaremba.

Mr. **Hultman**. Oh, but you are not on the record anymore—is that right?

Senator **Hatch**. Yes, we are on the record.

Mr. **Hultman**. No, I meant the transcript of the December hearing; you are not on that any longer.

Senator **Hatch**. No, no.

Mr. **Hultman**. Oh, OK. I was trying to find it further. Go ahead.

Senator **Hatch**. Oh, you had not found it? I was just reading it.

Mr. **Hultman**. Yes, but are you continuing to read from it?

Senator **Hatch**. No, no.

Mr. **Hultman**. OK. That is what I was trying to find out.

Senator **Hatch**. Before I ask you several questions about that letter, let me refer you back to hearing exhibit number 1—to the FBI investigative report dated May 13, 1971, and marked "Received."

Mr. **Hultman**. Now would you give me that exhibit, so I can get with it here?

Senator **Hatch**. This is hearing exhibit 1. You have it there.

Mr. **Hultman**. OK. All right.

Senator **Hatch**. It is marked "Received May 18, 1971, U.S. Attorney's Office, Northern District of Iowa."

Mr. **Hultman**. Yes.

Senator **Hatch**. In the FBI report at pages 20 and 21, of February 18, 1971, the Zaremba letter to Judge McManus is attached.

I refer you to the first paragraph of Mr. Zaremba's letter to Judge McManus, which says this:

> In the recent suit against Mr. Nard I was very surprised to learn that Armour & Co. had been awarded damages by the jury at Sioux City. In my opinion, as the former project manager on the subject project in litigation, I stated in my deposition and in answer to a direct question, that Mr. Nard did not delay that job, and I was surprised at the recent verdict since I felt Armour & Co. had no basis for a claim of damage against Mr. Nard for delay of the job when all of the mitigating circumstances were brought to light.

Apparently then your office was in possession of Mr. Zaremba's letter to Judge McManus by May 1971, 10 months before your first grand jury in which Mr. Zaremba testified. Is that not correct?

Mr. **Hultman**. Sir, in response to Senator DeConcini's question, he was asking me if I did recall, and I did not.

Senator **Hatch**. You have to admit you had the letter.

Mr. **Hultman**. That is right.

Once I had a chance to look at the exhibits, it is very obvious now that this particular letter did go and was in this FBI file. I do not have any quarrel with that at all.

I did not recall this particular letter, as I said at that time; but it is obvious; there is no question; I mean, it was there. There is no question of that on my part at this time.

Senator HATCH. All right. Mr. Hultman, in order to determine the whereabouts of Mr. Zaremba's letter during the next several years, I would like you to comment on the following document. That would be hearing exhibit No. 16.

[Exhibit No. 16 follows:]

HEARING EXHIBIT #16

October 24, 1975

Mr. John A. Nard
Woodcock Road
Sewickley, Pennsylvania 15143

Dear Mr. Nard:

I have this date as per your telephone request returned by certified mail to your home address the materials, consisting of five cardboard cartons, presented to my office concerning your allegations which were the subject of grand jury investigation now completed. I held them for personal pick-up as requested in your earlier correspondence.

I do not intend to again respond to the numerous allegations in your letters to me dated September 15, 1975, and received by certified mail on September 22, which were obviously intended for the benefit of the parties carboned on the correspondence. I noted that my letters were Xerox copies with no enclosures. All of the matters in your letter have been thoroughly considered previously and differing interpretations and conclusions reached.

Respectfully yours,

EVAN L. HULTMAN
United States Attorney

ELH:md

Boxes each:
→ 10½ x 12 x 15

1. Letter Nard - AHK 8/7/73 w/ attachments
2. Memo Nard - AHK 7/15/74 re: Missing daily reports
3. Complaint filed 11/26/68.
4. Questions for Frank Messinger by J.N.
5. Letter McCully - Nard 7/29/69
6. 4 Letters, 1 telegram re Countouris, all 1971
7. Transcript of testimony of of Wm. Bossenberger, marked up by N
8. Nard Notes on McKavis Court (T)
9. Memo McKavis - Zaremba 9/20/68
10. 2 Letters - J. E. Walkens Co. - Traulman, both 1971
11. 6 Armour Memos re Electrical 1/12/68, 4/8/68, 4/17/69, 1/12/69,8/14/69
12. Letter by D. C. Warner 9/20/71, 11/26/68, 3/11/68, 5/10/68,
    8/27/68, 7/15/68, 7/8/65
13. Letter Warner - Nard 4/24/68
14. Letter Countouris - McManus 4/22/70
15. 1 Notebook starting AS Drain perjury
16. Plaintiff's Exhibits DEG&K (Letters)
17. Statement of Forbes Bencetti Jr (2)
18. Zaremba Statement 10/18/71
19. Stapled materials on how subs paid
20. Two Letters by Stanley
21. Zaremba Memo 10/30/67
22. Letter Zaremba - McManus 2/18/71
23. Jos. Schmitt statement 8/5/69
24. Letter Zaremba - Nard 11/22/68
25. Materials re: Atlas Insulation
26. 2 Statements re: Ferry Elecduct
27. Materials re: Russell Industries (2 pp)
28. Memo Levitt - Young 4/14/69
29. Statement of Bruce G. Locke
30. 2 Statements of Robert Rampa
31. R. C. Jams bells (2)
32. Statement of C. Scranton
33. Affidavit of Zaremba in Opposition to Motion to Amend
34. Amended Answer and Counterclaim, McCully Smith v. Armour w/cover ltr.
35. Supplemental Pretrial Statement
36. Neis' Opinion
37. Drain Depo marked up by J.N.

38. Hartel Dep. marked by by J.N.
39. Cox Testimony marked up by J.N.
40. Heitzman " " " "
41. Zaremba " " " "
42. Big Black Notebook McKavis III
43. Materials pertaining to Tax
44. Letter J.N. - USA 12/1/73 re: Taxes
45. Material re EWA40
46. Agreement of McCully & Nard
47. Letter JN - ELH w/enclosures (nd)
48. Trompeter Depo
49. Notes re Levett Transcript
50. Nard Notes re: Trompeter (T)
51. Nard -xAttantia Addendum to Millman Notes
52. Nard Notes re: Clyde Armstrong
53. Nard Notes re: Thos. J. Jackson
54. Nard Notes re: Frank E. Dreistadt
55. Nard Notes re: Bob Bernard
56. Nard Notes re Rolf Scherer
57. Nard Notes re: Art Millman
58. Sweider depo w/ Notes
59. Nard Notes re: Millman
60. Red Notebook re Levett
61. Transcript 882-1169 marked by Nard
62. Envelope w/ Misc. loose Nard Notes re Documents
63. Red Notebook re: Trompeter, Millman, Sweeder
64. Misc. Notes
65. Notes re: Maichase
66. Notes re: McKavis Credibility
67. Lg. Black Notebook - Nard's Points 26-60
68. Lg. Black Notebook starting w/ Ramps
69. Lg. Black Notebook Nard's points 1-18
70. Red Notebook Wm. McKavis
71. Transcript of SUX Trial (5 vols)

Mr. HULTMAN. All right, sir.

Senator HATCH. This is a letter from you to Mr. Nard dated October 24, 1975, wherein you list the materials returned to Nard which he had provided to your office.

You say in this letter—let me just read the first sentence—

> DEAR MR. NARD: I have this date, as per your telephone request, returned by certified mail to your home address the materials consisting of five cardboard cartons presented to my office concerning your allegations which were the subject of grand jury investigation now completed.

Then you make a list of the materials sent Mr. Nard, and, of course, No. 22 lists the letter Zaremba/McManus dated February 18, 1971, indicating you not only had a copy of the Zaremba letter and report sent to your office by the FBI but that you also received a copy of his letter from Nard.

Mr. HULTMAN. Sir, again let us take it in sequence. The question in December—I had no chance to prepare; I had no knowledge; I had looked at no records; the events had taken place approximately 6 years ago; and I honestly responded that I did not recall.

Senator HATCH. But you see, Mr. Hultman——

Mr. HULTMAN. If you would let me finish, please.

Senator HATCH. Surely.

Mr. HULTMAN. There is no question, once I see what is here—there is no question but that that document was there, and I am not trying to infer that it was not. I returned to him anything and everything that had come into our possession at that time.

Senator HATCH. Including this letter?

Mr. HULTMAN. Yes; in fact, I made a list so that there would not be any—I did not make it; I mean I had somebody prepare the list.

Senator HATCH. But just stop and think about it. You came here last time without looking at your files that you knew you had access to. You talked very definitely about what you knew and what you did not know. You go home, and all of a sudden we see all of these articles about "Joe McCarthyism" and everything else.

Mr. HULTMAN. There was only one article, sir.

Senator HATCH. You said time after time that you did not realize these things existed. I can see that. I do not want to hold that against you. All I am saying is that you can see why this committee is very upset with your prior testimony, and I think you can see why Mr. Nard feels like he has really been mistreated.

Mr. HULTMAN. Sir, let me say to you point blank that again you have got to look at the circumstances.

Senator HATCH. I am.

Mr. HULTMAN. I received a phone call on a Friday in southern Virginia from my office that said, "You have been subpenaed to be at a hearing on Tuesday morning, and the sole knowledge of what it is is Jack Nard."

I returned to my office on Monday morning. I got home on Sunday night and returned to my office on Monday morning. During that morning, while I am trying to get things adjusted—and I want you to hear me out, please.

Senator HATCH. Yes, I am.

Mr. HULTMAN. While I am trying to get things adjusted in my office—lawsuits, as you well know; and I am a trial lawyer—to try and get those things adjusted is not easy, because they are not just matters where you can call a client up and say, "Come in for a will Thursday rather than next Tuesday."

Senator HATCH. Surely.

Mr. HULTMAN. It is court matters.

I then find out, because I get a letter from Senator DeConcini that morning—late in the morning—that there is a conflict—and I do not mean it is anybody's mistake; it is just one of those natural things—that says in effect, "You don't have to be here until Thursday if you don't have any documents to bring."

So I call and try and get it straightened out: Do I have to be there Tuesday, or do I have to be there Thursday? I had made my arrangements for that afternoon because I have got to leave in the afternoon to get here from Waterloo, Iowa.

When I found out after the return calls that I did not have to come on Tuesday, then I readjusted for Thursday, and I have to come on Wednesday in order to get here. Now, I did not have any time. Maybe you feel I did, but I did not have any time, and what was I going to go look for in the first place when all I know is that it is a matter concerning Nard? Until we get to some specifics, why am I going to go waste your time, my time, or anybody else's?

As a result, I came as a citizen. If I were trying to evade anything or avoid anything, I would have filed a simple motion and I would not even have been here, and you know that as a lawyer. But I did the very best I could to accommodate you and this committee. I came and did the very best I could when I lifted my right hand, and after I left the podium I found out that there are reports to you and to Senator DeConcini that say in effect that I am a criminal.

Now I do not know what is fair, but I did the very best I could that day.

Senator HATCH. I do not think the reports state that.

Mr. HULTMAN. Well, I would like to read those sentences out of them.

Senator HATCH. Mr. Hultman, let me just say this——

Mr. HULTMAN. So you thought I ought to go, in that short length of time, without knowing what specifics we were going to talk about—how could I have answered the questions that are here without a very thorough analysis, letting me know what are the areas you want to talk about?

Senator HATCH. Mr. Hultman, I am not sure anybody knew.

Let me say this: Nobody has a desire to take advantage of you. I certainly do not here today. I am just pointing out that you can see why some people felt that your answers were less than responsive.

Mr. HULTMAN. Well, the feeling was both ways, Senator. Let me say, when reports are issued to the press and I learn about them for the first time, and with all of the bad publicity that goes with it—including yesterday—that has a serious impact on a lawyer whose whole livelihood as a private practitioner is based upon confidence, is based upon honesty, based upon integrity. It has a devastating impact on a lawyer.

Senator HATCH. Oddly enough, Mr. Nard feels the same way. He feels like his whole life has just gone right before him, a life of what he considers to be honesty, competency, and decency.

The point I am trying to make is this: In the letter to Judge McManus, Zaremba said that there was no delay by Nard on the Sioux City job.

Mr. **Hultman**. Yes.

Senator **Hatch**. We previously read the trial testimony—at least I did not read it, but I referred to it—of Clifton Cox who said, "Nard was terminated, and they sued him for delay." Then Zaremba tells the Secret Service he was never asked questions about perjury.

Mr. **Hultman**. Well——

Senator **Hatch**. Let me just finish.

Mr. **Hultman**. I am sorry.

Senator **Hatch**. I have been interrupting you too. I do not blame you. It is just that we both want to get to the bottom of this.

I would think he would have been asked by you about Cox's testimony regarding delay. In other words, do you see my point? That was a crucial point. Cox lied, if I have to put it strongly enough; and I think you should have known it or you knew it, because Zaremba knew it, and Zaremba was their employee and was never asked that question. Cox's testimony was never challenged.

Mr. **Hultman**. I do not agree with that at all. That is a total conclusion on your part. What questions I asked Zaremba at that time nobody knows except God.

This was an interview by Secret Service conducted by your people, not by me. He was not on the witness stand where I had a chance to ask him questions. That is a conclusion on your part that I think is totally unfair.

Senator **Hatch**. It is a pretty darn fair conclusion.

Mr. **Hultman**. Well, I think——

Senator **Hatch**. Be it as it may, you dispute it, and I will certainly accept that.

Mr. **Hultman**. Plus, those very items, as you and I both know, were items of testimony in the various lawsuits and so forth; and people took different positions on it.

But the other thing I want to point out in response that it is very interesting: If you go through your exhibits, how many times have you ever had a witness for you or closely associated write the judge that has got the case prior to the case—which is one of these exhibits—and then write a letter after the case? I have a conclusion to draw as a lawyer as to what that is, and I do not think that is very ethical or very whatever you want to call it.

Senator **Hatch**. I am sure he wanted to get some justice done too.

Let me give you another illustration now. We do not have any problem with the fact that you did not see the documents—that you had short notice.

You could have done two or three things. You could have said, "Senator DeConcini, I must see these documents before I appear because I don't feel like I can answer your questions." Or if you did not want to take the time—and I can understand; maybe you thought you just had to be there, but frankly you did not just have to be there; we would accommodate you, and you have had to accommodate us because of our schedules.

Mr. **Hultman**. That is right.

Senator **HATCH**. You could have answered every single question on December 11 by just saying, "I don't remember."

Mr. **HULTMAN**. But I am not that kind of a person, Senator.

Senator **HATCH**. No, but we are challenging what were unequivocal statements, Mr. Hultman.

Mr. **HULTMAN**. OK.

Senator **HATCH**. In this case, this one says, "I would feel very confident that I have never seen this letter." You were so adamant on some of these matters.

Let me just throw another one your way that I think might be interesting. Look at exhibit No. 5. I will refer you again to your handwritten notes listing the 27 possible Nard witnesses: XVI is none other than Daniel Zaremba. No. 1—the first, first under XVI——

Mr. **HULTMAN**. I am not following. Where are you now, Senator?

Senator **HATCH**. You do not see it?

Mr. **HULTMAN**. I thought we were talking about——

Senator **HATCH**. We are talking about this letter.

Mr. **HULTMAN**. Let me get it clear where you are.

Senator **HATCH**. I am referring to your handwritten notes.

Mr. **HULTMAN**. I thought you were asking me about my testimony in December. Is that correct?

Senator **HATCH**. In your testimony in December you indicated that you felt very confident you had never seen the letter.

Mr. **HULTMAN**. The list in December does not have Daniel Zaremba first on the list. That is what I am trying to get squared away.

Senator **HATCH**. I am talking about your handwritten notes.

Mr. **HULTMAN**. We did not talk about my handwritten notes in December.

Senator **HATCH**. I am talking about them now because we are trying to show that you did know about Zaremba.

Mr. **HULTMAN**. That is not the case, Senator. If I had been given those notes on that day or been exposed to them, my answer would clearly have been different.

Senator **HATCH**. Maybe Senator DeConcini did not have those notes put together on that day, but what I am showing you is that maybe you did not know on that day but there is no question that you knew about the letter to Judge McManus.

Mr. **HULTMAN**. And today, once I have seen it, there is no question, no argument; but I gave you the best I could on that day of 5 to 10 years of memory without any advance in any way of what we were going to do here and what specific areas were going to be involved in any way. I think that I did the very best that I could do under those circumstances.

I would not come and stonewall it. I am not that kind of a guy. I think you can conclude that already.

Maybe I was trying to give Senator DeConcini the best that I could. Maybe I went too far in the process, but I honestly, as I said here, did not remember.

Senator **HATCH**. Mr. Hultman, I accept that. All I am trying to say is that you came in, into what was a very important hearing, and used words like "unequivocal," "absolutely," and "I know this is right"—those types of things—in a matter that was very serious, when in fact the documents show you knew about these things.

You have admitted here that you made a mistake on that—that you just forgot. I can accept that.

Mr. HULTMAN. All right, and we do understand each other on that?

Senator HATCH. We do. I am not questioning that. I am just saying though that these are important and you can see why——

Mr. HULTMAN. But I am not going to accept any fault, which I thought you were inferring—that I should have gone ahead and done a whole bunch of preparation under the circumstances.

Senator HATCH. No; but there is an implication, not that you should have prepared so much more for the hearing that Senator DeConcini conducted, but that you should have prepared well for the grand jury and made a case in the grand jury because the evidence was there to do it with.

Mr. HULTMAN. I am not going to argue with you about that. That is purely a subjective conclusion on your part that I think is very unfair.

Senator HATCH. Well, I apologize if you think it is unfair.

Mr. HULTMAN. I would like to repeat what I said on that day. At the very beginning of my testimony I tried to make it very clear that these events were 5 to 10 years before, that it was going to be difficult for me, and that you had to accept what I had to say with that in mind. I put everybody on notice.

Then at other times in that testimony again I said, for example on page 44 of the only one that I had to work from until today—and I do not have the corresponding pages—"I want you to know that my responses will be to the very best of my recollection. This was only one case in many cases I handled during that time," and on and on.

So what I am just saying to you is that I did the best I could with what I had.

Senator GRASSLEY. Mr. Hultman, let me say something at this point, because I was not here in December, and I can look at it a little differently.

It seems to me that the point ought to be made that if on December 11 the answers to these questions that you were given were so very important to getting the information that this investigating committee needs to get to the bottom of the whole matter that is involved with public integrity—if it were that important, you should have been made known what the possible questions were ahead of time so you could be prepared. It seems to me that it is that basic.

Mr. HULTMAN. In fact, Senator, going out of that meeting—and I wish Senator DeConcini were here—he said to me point blank—and I cannot find it without taking a lot of time—one, he felt I had been very candid and straightforward; and, two, that he would get back to me with reference to additional questions.

I have done my very best, since that time, in order to get us in the kind of posture that we are in here today.

The other thing is: Nobody has ever, except for the subpena to come in December and now the hearing today—for which I am very thankful, and I want to thank you again—I have never had anybody come to me and ask me one question.

For example, if those things are so critical as that, why does not a staffer come to me or somebody. They went to everybody else. If you are just looking for the information, come to me and I will sit down with the records and do the best I can.

Senator HATCH. I understand.

Senator GRASSLEY. Are you saying that there is not a single person that has had anything to do with any of these reports who has ever talked to you?

Mr. HULTMAN. No one has ever talked to me about anything here prior to the subpena that I received on a Friday and the letter on Monday to sit in this courtroom right now.

Senator HATCH. The only investigator that was sent out was sent out prior to this hearing, and you were in Germany at that time.

Mr. HULTMAN. Well——

Senator HATCH. That is my understanding.

Let me say this: I think you and Nard are equal then, because hardly anybody has ever looked into his case.

Senator GRASSLEY. Mr. Chairman, he was in Germany 1 week.

Senator HATCH. That is when the investigator was out.

Senator GRASSLEY. It was the Thursday before though that somebody on the staff of the Judiciary Committee told me that the investigators were out. That person could be wrong.

Senator HATCH. We heard about that same time, as I understand it.

Senator GRASSLEY. That person could be wrong.

Senator HATCH. Be that here or there, I would have no objection to any investigator asking you questions. That is what we are doing here today.

Let me move on to another subject. Maybe hearing exhibit No. 17 would be helpful here.

[Exhibit No. 17 follows:]

HEARING EXHIBIT #17

__________ was interviewed on June 29, 1979, by Michael F. Murphy and David H. Noznesky at his place of employment, Rockwell Goss, Cedar Rapids, Iowa, telephone __________.

______ confirmed that he was the foreman of the Federal Grand Jury convening in Cedar Rapids, Iowa, in 1974. ______ recalled the Grand Jury investigation of the Jack Nard matter. He believed that there were only two witnesses, Nard and an official from Armour Company. The testimony was long and complicated with documents. He characterized Nard as being erratic. He remembered seeing a court reporter present during some of the sessions, but could not be certain which ones.

______ stated that U. S. Attorney Hultman briefed the Grand Jury before Nard's testimony. He received the impression from this briefing that Nard was a "crackpot" and they they were "going through the motions" with this case. Further, he was left with the impression that this case was a "waste of time" and was "way out in left field". ______ also recalled being told about Nard's tax indictment. ______ summarized U. S. Attorney Hultman's feeling as being something to the effect, "Let's hear this guy - he may be boring, but let's hear him and get on with other matters".

______ considered the Nard matter very complicated and he never really knew what the Grand Jury was supposed to look for. On more than one occasion ______ wondered what the Grand Jury was doing in this case. To the best of his recollection, he did not believe anyone told the Grand Jury what to look for or what direction they were going in. He believed there was a general feeling of bewilderment with the Grand Jury regarding the Nard matter. ______ could recall no vote at any point during this investigation. Further, he wondered why the case was left hanging and assumed that it would go to the next Grand Jury.

______ did not consider the Nard case to be handled any different than the other cases before the Grand Jury.

______ could provide no additional information.

__________ was interviewed on June 1979 by Michael F. Murphy and David H. Noznesky at her place of employment, ______________, Southwest, Cedar Rapids, Iowa, telephone 319/366-7591. She resides at ______________, Cedar Rapids, Iowa, telephone 319/________

____ confirmed that she was a juror on the Federal Grand Jury convening in Cedar Rapids, Iowa, in 1972. She recalled the Jack Nard matter. To the best of her recollection, Nard was the only witness. She described his testimony as intricate and complex. She stated that she sympathized with Nard because, like Nard, she is in the construction business.

____ described other members of the Grand Jury as being confused about the case. After testimony, there was minimal deliberation about the case, and she believed no vote was taken at any time by the jurors. Her impression was that the other jurors were bewildered, and she stated, "I believe they were thinking he was trying to pull something over".

____ indicated an Assistant U. S. Attorney with a mustache handled the Nard matter and gave them a briefing about the complexity of the case. She knows U. S. Attorney Hultman and was certain he was not involved in this case. She also recalled this Assistant U. S. Attorney telling them at some point that the Nard matter would no longer be pursued. Further, he left them with the impression that the U. S. Attorney's office questioned Nard's veracity and truthfulness. She could not recall specifically what he told them.

____ could provide no additional information.

________ was interviewed on June 27, 1979, at his office in Wellsburg, Iowa by Michael F. Murphy and David H. Noznesky.

________ was foreman of the 1972-3 Grand Jury. He works in the insurance and real estate business and was a State representative for 16 years. He could only recall missing a half day of one meeting. ________ remembered the Nard case, but could not recall specific witnesses or the type of testimony heard. His general impression was that the U. S. Attorney's Office was over-burdened with work, but that this case was not handled any differently than the others. There were other cases that were not completed during the term of the grand jury. His jury did not take a vote on the case. He was not sure of the focus of the investigation and did not think that enough was presented to even consider a vote.

________ does remember Nard appearing at least once. He characterized Nard as a "shyster". There was little discussion of any case before witnesses appeared; however, someone, possibly another witness, conveyed the thought that Nard was involved in a fraud in another state. Court reporters were not regularly used during these grand jury sessions. ________ could recall a reporter being present on only one or two occasions and that was on other cases.

________ still had his original notes from the grand jury, but there were no entries about the Nard case. He concluded that there must not have been much testimony of value.

Hearing Exhibit #17

______ was interviewed on June 28, 1979, at his residence in Cedar Rapids, Iowa, by Michael Murphy and David H. Noznesky.

He was a member of the 1974-5 Grand Jury in Cedar Rapids. ______ had strong opinions about the Nard case. He felt that too much of the Grand Jury's valuable time was wasted, and he was angry that tax dollars had been spent to no avail. It was his belief that the case was presented to the Grand Jury as a "political payoff". Hultman personally handled the sessions on the Nard case. ______ knew that Hultman made a lot of trips to Washington, D. C. and speculated that these were his rewards for pursuing the Nard case.

According to ______ the consensus of the jury was that Nard was a crook. He gave conflicting testimony and also erroneous information on some electrical matters. Perry was an engineer and felt confident in evaluating Nard's testimony. He remembered that Nard had a great many documents but that they did not prove anything.

______ stated that he was never sure what this investigation was after. He recalled that it might have had something to do with a money payment. He said that he kept waiting to see what was going to come as its purpose and never felt that perjury was the focus.

He had no additional information.

[redacted] was interviewed by Michael F. Murphy and David H. Noznesky, at the Cedar Rapids Civic Center, where he was working for Kennedy & Co., on June 29, 1979.

He said that he missed one session due to illness. He only remembers Nard's testimony and does not recall any other witnesses in this case. [redacted] related that Hultman talked to the jury before Nard testified. He went over the allegations of Nard but ______ had no recollection of examining possible perjury. ______ said that he had the feeling that Hultman felt that the Nard case was a waste of time and that Nard had nothing to stand on. ______ believes that he may have received this impression from Hultman prior to Nard's testimony.

This case never came to a vote because no indictment was ever presented for consideration. ______ said that the jury was not sure what violation they were looking for. He felt that Nard was trying to get something for nothing and that he had gotten a fair trial earlier. ______ believed that the jury feeling was generally negative toward Nard.

On several occasions, a male court reporter was present but ______ is not sure if this was during the Nard case.

__________ was interviewed at her home on Riverview, Vinton, Iowa, on June 27, 1979 by Michael F. Murphy and David H. Noznesky.

She was a member of the 1974-5 Grand Jury in Cedar Rapids. She remembered that Nard testified, but does not remember any other witnesses in his case. The focus of the investigation was not clear. She does recall seeing pictures of Nard's house and that it had something to do with the case.

________ did not think that a court reporter was ever present during testimony. She does feel that all the cases were handled in the same manner and the Nard case did not stand out as unusual for any reason. In her opinion, most of the jurors had negative feelings toward Nard.

She had no further information.

EXHIBIT 17

United States Department of Justice
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF IOWA
P. O. BOX 4710
CEDAR RAPIDS, IOWA 52402
TELEPHONE—AREA 319 NO. 366-8411 EXTN. 066

September 24, 1980

The Honorable Orrin G. Hatch, and
The Honorable Dennis D. DeConcini
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senators Hatch and DeConcini:

In response to a request from this Committee and with the permission of the Department of Justice, I am writing to give you my recollections and what my files and records reveal concerning an article about Thomas Henderson in the Federal Times of March 17, 1980, by Inderjit Badhwar and Sheila Hershow [1] and the Department of Justice's oral testimony and written summaries, [2] in response to this Committee's inquiry into the facts of the Federal Times article.

1. I believe it best to start with the allegations regarding the missing investigative files relating to John A. Nard's complaints to the Justice Department about former United States Attorney Evan Hultman, my predecessor in this office. Mr. Nard first approached me with his complaint against Mr. Hultman's investigation by phone the day before I was sworn in as United States Attorney, November 10, 1977. He briefly explained his charges against Armour & Company and his attorneys, along with certain Government officials. He indicated that his charges against these people were mismanaged

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[1] Attached is a Xerox copy of a portion of the article pertinent to the Nard case.

[2] Xerox portions of the Summaries and "facts" and "allegations" are attached.

by Mr. Hultman, which could be verified by Clark Mollenhoff, a Pulitzer Prize-winning investigative reporter, and United States Senator Orrin Hatch of this Committee, a witness to some of the matters complained of by Mr. Nard.

While in Washington on November 16, 1977, I met with and explained Mr. Nard's complaints to Michael Egan, then Associate Attorney General, who referred me to Benjamin Civiletti, at that time head of the Criminal Division. Mr. Civiletti was not available, so I met with his assistant, Tim Baker, who referred me finally to Thomas Henderson, the head of the Department's Office of Public Integrity. I explained Mr. Nard's complaints to Mr. Henderson who indicated he was somewhat familiar with the matter, which had been investigated by other Department personnel. Mary Wagner had been assigned the complaint because of the possible conflict with the Deputy Attorney General's side of Justice, and the complaint against Hultman and others had been assigned to the Associate Attorney General's side and to Ms. Wagner under the then Associate Attorney General, Judge Tyler. Tom Henderson agreed to see that Ms. Wagner's files were obtained for me so that I might verify that she in fact had investigated Nard's complaint against Hultman and others as she had stated in her letter of July 26, 1976.[3] He also advised me against my planned first face-to-face meeting with Mr. Nard and later with Senator Hatch. (Senator Hatch had represented one of the sub-contractors in the underlying Armour contract dispute involving Mr. Nard.) Henderson warned that Nard was to be treated skeptically and assured me that although former Senator Scott, who Nard included in his charges, was about to be indicted on an unrelated income tax matter, the Department had found no basis for Nard's complaints after a thorough investigation.

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[3] Wagner's letter to Nard of July 26 attached.

Clark Mollenhoff confirmed that evening to me his personal belief in the substance of Nard's complaint against Hultman as did Senator Hatch in our breakfast meeting the following morning.

Upon my return to Iowa a review of matters in the United States Attorney's office heightened Nard's credibility and the possibility his complaints were true.

I waited until December 16, 1977, and when I had not received Ms. Wagner's files as promised from Henderson, I wrote to Tom Henderson about his promise of November 16, 1977, to produce these files for me.[4] When the David Marsten case caused Attorney General Griffin Bell, in January of 1978, to issue an Order to all United States Attorneys to report to him, through Bill Tyson of our Executive Office, any pending investigation of prominent persons so as to avoid future Marsten affairs, I sent a letter on January 25, 1978, to the Department of Justice detailing the subjects of Nard's complaints and, in the final paragraph, asking the Attorney General's help in obtaining the files Tom Henderson had promised.[5]

On February 16, 1978, Tom Henderson called and told me that the files would be available, and I indicated that I would examine the files while in Washington on other business in mid-March of 1978. Henderson followed this up with a letter to me of February 22, 1978.[6] Approximately a week before my meeting on March 15, 1978,

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[4] Attached is my letter of 12/16/77 to Tom Henderson.

[5] My letter of January 25, 1978, to Attorney General Griffin Bell attached.

[6] Thomas Henderson's letter of February 22, 1978, to me attached.

I contacted Eric Holder as directed, but he was unavailable and I talked to Tom Henderson who indicated that the materials I was requesting would be at the front desk when I arrived. On March 15, 1978, I went to Public Integrity, where I received only Nard's tax files, not Ms. Wagner's investigative files. I then asked to talk to Tom Henderson and discussed with him the matters of Ms. Wagner's files. He suggested I go over to the Main Justice Building and check at Mary Wagner's former office at the Associate Attorney General's section. I did this and discussed the files with Ms. Wagner's former secretary, Judith D. Woolley, who said she remembered the Nard matter and that a thick file of Mary's extensive investigation should be "around somewhere". We then proceeded to the record storage area in the Main Justice Building and searched for several hours with the record custodian, Dorothy A. Kluge. Finally, at the end of the day, I returned to Tom Henderson's office and told him Mary Wagner's files were missing. He suggested then that the only way to reconstruct Ms. Wagner's investigation was to have her detail out to me who she had talked to and for me to check with those people to confirm that she had and thereby satisfy myself that Justice had given Mr. Nard's complaints a full hearing. The need to obtain Ms. Wagner's files was due to the fact that after my November, 1977, first meeting with Tom Henderson I had told Mr. Nard that my investigation would be limited solely to satisfying myself of her work by review and verification that she had done what she said she had in her letter. (Refer to fn. 3.) Nard had predicted I would never find any files and that no investigation had in fact ever been conducted.

On March 14, prior to going to Tom Henderson's office, I had talked to Ms. Wagner at her private law office and she indicated she would check her phone logs concerning the claim by Nard and Senator Hatch that his attempts to contact her during the investigation had met with no response. On April 4, 1978, after returning from Washington, I called Ms. Wagner about her missing files and she indicated that it was "a little strange" but that she could not now find her phone logs and that there may not be much of a file, so may not have been much missing. I indicated to her that I was going to write to her requesting that she detail for me her investigation so that I might be able to verify it.

I wrote to Ms. Wagner at her law firm for information on the investigation.[7] The letter was returned by the Postal Service indicating the addressee had moved and the letter was not forwardable. On April 19, 1978, I called Ms. Wagner by phone and she confirmed the address of her law firm at 1900 "M" Street, and I re-mailed the letter to her.

During this period of time I also was informed from confidential sources that the Federal District Judge involved in Nard's complaint had allegedly paid money to a U. S. Senator for his position. I immediately conveyed that information to Tom Henderson and on May 8, 1978 was told that the matter had been investigated and determined that the statute of limitations on the allegation would have run but that the matter had been turned over to the Judicial Conference and the Bar Association.

After a month of not hearing from Mary Wagner concerning my letter, I began to call her from approximately the 25th of May on through the end of May. I did contact her, and she confirmed that she had received the letter and although busy would respond before the end of the month of May. When I did not receive Ms. Wagner's promised response I attempted to contact her by phone without success and was left with the impression she was avoiding me. On June 12, 1978, I subpoenaed Mary Wagner to a Federal Grand Jury in Sioux City, since she would not respond and I had no other alternative. On June 14, 1978, Ms. Wagner called indicating that she was to have a baby in three weeks and would be unable, under doctor's orders, to travel to Iowa to the Grand Jury scheduled for June 20, 1978. She indicated she had been attempting to find her files, both at home and at the Department and had been unable to do so and promised she would respond to my letter of April 4, 1978, by the end of the week (June 16, 1978). I told her she would not have to attend the Grand Jury on June 20, 1978, if she would respond to my letter by the date of the Grand Jury and if I would receive a letter from her doctor before that time indicating she was not able to appear. She indicated that she would do both things by that time.

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[7] My letter of April 4, 1978, to Mary Wagner.

On June 20, 1978, I had neither received the letter from Ms. Wagner nor from her doctor. The United States Marshal Service called Ms. Wagner, who was at home and who indicated she was not going to appear and claimed that she thought the date of appearance was June 22 (Thursday) rather than Tuesday. She had no explanation as to why the doctor's letter had not been received. I contemplated a request for citation for contempt for failing to appear or respond; however, instead I called Attorney General Griffin Bell on June 23, 1978, when I still had not received any of the promised letters.

I talked to Attorney General Bell's aide, J. Phillip Jordon, who indicated he would check with Messrs. Tyson, Civiletti and Egan and get back to me concerning the situation. Ten minutes before 5 o'clock p.m. on June 26, 1978, Mr. Jordon called to inform me that he had talked to Mary Wagner and she indicated that she had talked to Evan Hultman and some others and that she would respond to my letter of April 4 by Wednesday, June 28. I waited until Wednesday and heard neither from the Attorney General's office nor from Ms. Wagner. Finally, on Friday, June 30, 1978, at 16:19:30 I received a teletype from Phillip Jordon of a letter to me dated June 29, 1978, from Mary Wagner sent on the Justice Department teletype. Finally, on Monday, July 3, 1978, I received Ms. Wagner's response to my letter of April 4.[8]

The letter questioned the existence of her files, which I had previously been assured existed and had spent almost seven months looking for. The letter also listed persons contacted in her investigation. It appeared that the people questioned were only peripherally engaged in the complaint and that Ms. Wagner had relied mostly on Mr. Hultman's explanation of his difficulties with the Nard investigation. She did confirm, however, that Mr. Hultman had found perjury, as claimed by Mr. Nard, but he had been unable to prove it.

I then decided I needed to expand my investigation of Mr. Nard's complaints. I also had in the course of attempting to reconstruct Ms. Wagner's files found that Mr. Nard had previously given information to the Watergate Special Prosecutor's office, which had resulted in the indictment and conviction of a major corporation, Greyhound, Inc.[9] With this background, I decided to conduct my own investigation of Mr. Nard's complaints against Mr. Hultman and his claimed mismanagement of Nard's complaints against Armour, its attorneys and other public officials.

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[8] Letter to me from Mary Wagner of June 29, 1978.

2. My access to the Watergate Special Prosecutor's files at the National Archives was for the purpose of investigating Mr. Nard's complaints which included allegations against former Senator Hugh Scott. The records at the National Archives were checked by the archivist and showed that none of Hugh Scott's investigative records were among those that were turned over by the Watergate Special Prosecutor to the National Archives. The reason given to the archivist for this was that the Scott investigation involved income tax matters and due to the law on non-disclosure of tax material, these materials could not be turned over to the National Archives with the Watergate matters. The Scott materials, I believe, were handled by the Watergate Special Prosecutor, the Justice Department Tax Division and are now at the Internal Revenue Service in Washington. The Watergate Special Prosecutor's files, therefore, do not appear to be missing but would be at the Internal Revenue Service. I have never verified that, since Scott's income tax matter was not directly material to the Nard complaint. Nard complained that Senator Scott in his position as one of the most powerful members in the United States Senate Judiciary Committee during his party's years of administration allowed him, due to the advice and consent requirement, to be in a controlling position on all Justice Department personnel requiring advice and consent and Federal judges of all levels and most particularly those relative to the State of Pennsylvania. The circumstantial evidence was established for such an allegation; however, the only allegation

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[9] Watergate Special Prosecutor's material attached.

directly relating to Mr. Nard's complaint was that in regard to the allegations previously mentioned which have been referred to Tom Henderson's office, which had indicated the statute of limitations had run on the facts concerning that allegation. Tom Henderson also confirmed that this allegation had been thoroughly investigated to Assistant Attorney General Philip Heymann and others in my presence in a subsequent meeting in August, 1979.

3. I decided to conduct my investigation at first by calling certain witnesses before a Federal Grand Jury in Sioux City, Iowa. After initially calling a number of witnesses it appeared that the Grand Jury method of investigation was cumbersome and that the Grand Jury could do their work better by utilizing investigative agents of the Grand Jury. As a result I contacted the Department of Treasury, Secret Service. In a previous discussion with then Assistant Attorney General Civiletti I had been told that the United States Attorney had the discretion to utilize any investigative agency he saw fit, no matter the traditional jurisdictional boundaries of investigative agencies. I chose the U. S. Secret Service for the reason that I had great confidence in their investigative abilities, my previous experience that the Service's dual duties of protective service and investigation made them most comfortable with persons of high rank and they would be unswayed by the position of the person they were investigating or interrogating. The Secret Service agreed to assign two agents to the matter, after confirming the matter with an undersecretary of the Treasury, Richard Davis, and the Department of Justice. Agents Michael F. Murphy and David H. Noznesky then conducted the interviews of 33 people, which interviews were conveyed to the Grand Jury in narrative form.

As part of their investigation Agents Murphy and Noznesky interviewed Ms. Mary Wagner. In making arrangements for her interview, Ms. Wagner indicated for the first time that she could not discuss the matter without Justice Department approval. Although this is a standard regulation, Ms. Wagner had not raised the issue until this time. Agents Murphy and Noznesky cleared the interview with appropriate Justice Department personnel and interviewed Ms. Wagner on August 7, 1979. Prior to the interview, arrangements had been made with Agents Murphy and Noznesky to have in their possession a Grand Jury subpoena which they were authorized to serve on Ms. Wagner if they felt at the completion of the interview that it would be better for her to have made her statements under oath before the Grand Jury. At the completion of the interview of Ms. Wagner, they served her with the Subpoena to appear before the Grand Jury at Sioux City, Iowa, on August 20, 1979.

On August 10, 1979, I received a telephone call from Robert Ogren, representing Ms. Wagner, who indicated that due to her and Mr. Ogren's vacation schedules he would like her appearance before the Grand Jury to be delayed. I indicated to him that I would consider the matter and get back to him by Tuesday, August 14. At 11:00 a.m. (CDT) August 14 I contacted Mr. Ogren and inciated to him that I could not inconvenience my 24 Iowa grand jurors for the convenience of two Eastern lawyers and, therefore, would have to require Ms. Wagner to appear as subpoenaed. Mr. Ogren became quite upset and inquired whether or not I had received approval for Miss Wagner's appearance as provided by 28 CFR 16.21. At 5:55 p.m. (CDT) that same day I received a call from Phillip Heymann inquiring about my subpoena of Mary Wagner. I briefed Assistant Attorney General Heymann on the nature of the investigation and he indicated that I should come to Washington to discuss the matter. I asked to bring along my investigator, Michael Murphy, and Heymann agreed.

On August 16, 1979, the day Attorney General Civiletti was sworn in, Agent Murphy and myself met with Assistant Attorney General Heymann, Tom Henderson, Deputy Assistant Attorney General John C. Keeney. Tom Henderson was present during the entire meeting from approximately 3:00 in the afternoon until 7:30 p.m. During the meeting Agent Murphy and I briefed those present on the investigation and the necessity for interviewing other former members of the Justice Department besides Mary Wagner. Questions were raised concerning the amount of time which had been taken up in this investigation and the necessity for continuing and interviewing additional people in light of the fact that we had been able to substantiate Mr. Nard's claims at that time. Assistant Attorney General Heymann indicated that authority would be given to interview former Assistant Attorney General Richard Thornburg, former Assistant United States Attorney Alan Kirshen, former United States Attorney Evan Hultman, and other former departmental personnel. We also agreed to attempt to complete these interviews within thirty to sixty days. During this conference Mr. Henderson was present and participated by giving his version of various matters that had transpired and his recollection of departmental activity.

The investigation of Mr. Nard's complaints was finally completed in June of 1980 in the final session of the Sioux City Grand Jury. The Grand Jury had previously indicated in the Fall of 1979 that they did not wish to hear any more evidence unless I felt there were additional matters which should be brought to their attention. I did this in June of 1980 and, following that presentation to the Grand Jury again, agreed they wanted to take no further action on Mr. Nard's complaints nor would they recommend any further investigation nor bill of indictment be presented for discussion or vote.

4. The Department has furnished a written item called "Summary" concerning the Nard matter. The summary is basically correct, with certain important exceptions:

a. The whole genesis of the payments for Nard's house by Armour & Company are not as certain as stated in the Summary for the reasons that:

i. The manner of billing by sub-contractors to Nard for his house was immaterial until the Armour contract was terminated, since it was a design and build contract with a fixed fee maximum. Payments by Armour to Nard's partnership under the contract were without regard to the sub-contractors' billing, but only were in proportion to the percentage of the completion of the project as certified by Armour personnel and Nard.

ii. Once the contract was terminated Armour directed the sub-contractors were to be paid only after their bills were audited. The audit was not done and the sub-contractors were paid for items including Nard's house which was carried as EWA 40.

iii. The payments by Armour for Nard's house appeared to be intentional by Armour. This would substantiate Nard's charges that Armour payments were made to make Nard look like a crook and then make him a crook when the Internal Revenue Service discovered (Nard maintains Armour involved the IRS to discredit him) and prosecuted Nard for "constructive receipt" of the house through Armour payments which Armour now maintains were made in error.

iv. Judge Joseph Weis, then of the United States District Court of Pennsylvania, now of the Third Circuit Court of Appeals, ; ordered restitution by Nard to Armour for the house payments claimed and made by Armour, however, some of the subcontractors still have liens against Nard's house for those claimed payments, which the Nard partnership repaid to Armour. This matter was still being litigated as recently as 1979 in the Federal courts in Pennsylvania.

CONCLUSION

The four items listed above appear to be mistaken statements of the facts concerning the Federal Times article. There are some files missing; there are some files not where they might be expected; there was a meeting at Justice in which the investigation was questioned and authorized to continue; there would appear to be some factual basis for Nard's initial complaints against Armour & Company and its personnel. The conclusion of my office's investigation, however, of Mr. Nard's complaints against my predecessor, former United States Attorney Evan Hultman, and his Assistant, Alan Kirshen, have not been able to be verified to the degree required with the presentment of a criminal indictment against them or any other accused. I feel that although Mr. Nard's charges have not been able to be verified, they are not such as to make either my investigation or that of Mr. Hultman and Mr. Kirshen frivolous or a waste of time. They do establish one matter which I believe the Senate Judiciary Committee should examine and adapt measures to protect against, and that is that the advice and consent role as exercised by the Senate Judiciary Committee does not become one of formality only, stifled by senatorial custom and courtesy, or subject to abuse in any manner. This investigation has raised some serious questions about some of the very basic structures of our governmental system. They have convinced me of the necessity for a free and independent investigator-prosecutor. Serious concern must be given to the structure under which we investigate claims of abuse against those who have been given the most sensitive levers of power in our society. I could not substantiate the claims that judicial and justice system had been tampered with, but my investigation did confirm in me the belief that without a better system of checks and balances, more than just circumstances which indicate abuse will exist. I believe Watergate has indicated how little our society can afford the actual corruption of the justice system.

I am,

Very truly yours,

JAMES H. REYNOLDS
United States Attorney
Northern District of Iowa

JHR:mb

Encl. - 9

Senator HATCH. Mr. Hultman, these are the Secret Service interviews of six of the grand jurors who sat on the three Nard grand juries.

Mr. HULTMAN. Yes.

Senator HATCH. We will not use their names because of privacy considerations, but they are revelatory.

Mr. HULTMAN. Fine.

Senator HATCH. Although no juror was unequivocal—and I think that should be stated—the general pattern throughout their statements seemed to be one of confusion and uncertainty. Why do you suppose none of the grand jurors remembered the focus of your investigation was perjury?

Mr. HULTMAN. Senator, did you say six interviews here?

Senator HATCH. Six grand jurors.

Mr. HULTMAN. They heard many cases over the period of time. There were 3 grand juries and 23—not 24, as is in Reynolds' letter to you. That is 69 people who are a cross section of the northern district of Iowa. You have all sizes and shapes involved there, different levels of interest, mentality, and everything else.

I will be very frank about it. If I were one of them, going back, trying to remember what took place during that period of time, I probably could not recall any more than this.

But there are some other factors which enter in. They sit for a period of 18 months hearing various cases and so forth. It is not like in many districts where a grand jury sits for one single case in the hinterland of Iowa. A grand jury comes in, and they may hear 20 or 25 cases at that one sitting.

Not only do they hear 20 or 25 cases—at least during my time; I do not know since then—but the cases would come and go with them. You would have to break out of one and go into another in order to get the workload done.

You will also note, in every one of these exhibits that the agent talked to, that they had observations about the testimony, and the feeling, and the attitude of Mr. Nard. That likewise enters into whatever it was they were listening to.

Senator HATCH. Let me take a few minutes here, because I think it will help. For instance, here is one by one of the foremen of the Federal grand juries.

Mr. HULTMAN. Which number is this?

Senator HATCH. This is the first on your list. This is the one who was interviewed on June 29, 1979.

Mr. HULTMAN. OK; 17, I think, is your number.

Senator HATCH. Let me go down to the third paragraph and show you what they had stated that U.S. Attorney Hultman briefed the grand jury before Nard's testimony.

> He received the impression from this briefing that Nard was a crackpot and that they were going through the motions with this case. Further, he was left with the impression that this case was a "waste of time" and was "way out in left field." Also recalled being told about Nard's tax indictment. Summarized U.S. Attorney Hultman's feeling as being something to the effect "let's hear this guy; he may be boring, but let's hear him and get on with other matters," because I understand he considered the Nard matter very complicated and he never really knew what the grand jury was supposed to look for. On more than one occasion wondered what the grand jury was doing in this case. To the best of his recollection he did not believe anyone told the grand jury what to look for or what direction they were going in.

He believed there was a general feeling of bewilderment with the grand jury regarding the Nard matter. Could recall no vote at any point during this investigation.

The next one——

Mr. HULTMAN. Before you leave that, let me make a comment, if you would.

Senator HATCH. Sure.

Mr. HULTMAN. You did not read—and I think it is very important——

Senator HATCH. I will read the whole thing if you wish.

Mr. HULTMAN. I do not mean that you left it out.

Senator HATCH. I do not mean to leave anything out.

Mr. HULTMAN. I know that.

Senator HATCH. The whole statement and all of this will go in the record.

Mr. HULTMAN. But as a part of this record—and who is listening now—and I guess we are here for some reason beyond just you and I.

The testimony was long and complicated with documents. I think you and I would be the first to admit, from what you know of these events, that is very true. This is one of the real problems that we have had in the case of Mr. Nard because he, without any question, is probably the most difficult fellow to sit down and try and get in a logical manner what it is you are trying to produce in the process.

The other point I want to make is that this is not a grand jury hearing a case that is cut and dried of the normal variety, where you come in, one agent sits down with a report—as you well know—reads that report with the bottom line a nice ribbon around it, and the grand jury votes up or down, and they know clearly what it is.

This was an investigative grand jury, and we were trying to probe. Maybe my attitude as a prosecutor here is not that of the average one, but I kind of believe that all persons' rights ought to be protected in a grand jury proceeding. That means that you do treat every one of the witnesses and you treat all of those who are accused in a way, especially in an investigatory grand jury, that leads to sometimes these kinds of conclusions.

I was not going in, as some prosecutors do—and I think that is the worst of prosecutorial discretion—to walk in and sell the grand jury on a given indictment. That is not the purpose of an investigatory grand jury at all.

Senator HATCH. I agree with that.

Mr. HULTMAN. What I am saying to you is that I am sure these two factors were very important items in the minds of the jurors during this period of time because I had the same problems, to be very frank about it.

Senator HATCH. Let me go through what a few of them say, for better or worse. The second one was interviewed at her home in Riverview, Vinton, Iowa.

Mr. HULTMAN. Which number?

Senator HATCH. They are not numbered, so I just have to try and give you——

Mr. HULTMAN. Riverview, Vinton, Iowa—that is the one?

Senator **Hatch**. Yes. Let me read them all, and then you can make any comments you care to.

Mr. **Hultman**. All right. Fine.

Senator **Hatch**. She was a member of the 1974-75 grand jury in Cedar Rapids. She remembers that Nard testified but does not remember any other witnesses in his case. The focus of the investigation was not clear. She goes on to say in the last sentence that in her opinion most of the jurors had negative feelings toward Nard.

The next one is on June 29.

Mr. **Hultman**. Could I respond? I think it will be a little quicker if I respond.

Senator **Hatch**. Sure.

Mr. **Hultman**. It is obvious here that this witness is wrong in her memory, because at this grand jury we are talking about—there are a number of witnesses by another one of your exhibits that are called and appeared before the grand jury. So this again is a matter of faulty memory, and her conclusion on this could be equally as bad as the conclusion of somebody else on the previous one.

Go ahead, sir.

Senator **Hatch**. OK. The next one was done at the Cedar Rapids Civic Center on June 29. "He said that he missed one session due to illness. He only remembers Nard's testimony and does not recall any other witnesses." The first one recalled two witnesses—Nard and one other person. The second one only recalled one. This one recalls I suppose just Nard.

> Related that Hultman talked to the jury before Nard testified. He went over the allegations of Nard but had no recollection of examining possible perjury. Said that he had the feeling that Hultman felt that the Nard case was waste of time and that Nard had nothing to stand on. Believes that he may have received this impression from Hultman prior to Nard's testimony. This case never came to a vote because no indictment was ever presented for consideration. Blank said that the jury was not sure what violation they were looking for. He felt that Nard was trying to get something for nothing and that he had gotten a fair trial earlier. Blank believed that the jury feeling was generally negative towards Nard.

I take you would have the same comments for that?

Mr. **Hultman**. Yes, I would.

Senator **Hatch**. The next one is June 27, 1979, in Wellsburg, Iowa.

> Blank was foreman of the 1972-73 grand jury. He works in the insurance and real estate business and was a State representative for 16 years. He could only recall missing a half-day of one meeting. Blank remembered the Nard case but could not recall specific witnesses or the type of testimony heard. His general impression was that the U.S. attorney's office was overburdened with work but that this case was not handled any different than the others. There were other cases that were not completed during the term of the grand jury. His jury did not take a vote on the case. He was not sure of the focus of the investigation and did not think that enough was presented to even consider a vote. Blank does remember Nard appearing at least once. He characterized Nard as a scheister. There was little discussion of any case before witnesses appeared. However, someone—possibly another witness—conveyed a thought that Nard was involved in a fraud in another State, et cetera.

Mr. **Hultman**. If I could respond differently on this one, sir, or additionally——

Senator **Hatch**. Sure.

Mr. **Hultman.** First of all, if you look at the date, this is the first grand jury. We are not talking about real late in the game. Second, I think it is very critical and very important there—and this is something that we somehow kind of pass over—when we were in the investigatory grand jury there was some anti-Nard testimony by witnesses, I can say to you, that was very serious in nature, without getting into it in detail or violating the rule.

So this is not, when you have an investigatory grand jury, just a one-way street. It has to do with witnesses that are pro-Nard's allegations as well as anti-Nard allegations.

Senator **Hatch.** The next one was a resident from Cedar Rapids. I will just state this conclusion: He said that, "he kept waiting to see what was going to come as its purpose. He never felt that perjury was the focus."

The last one—there is one more, for whatever it is worth—has a place of employment as Southwest Cedar Rapids:

> She believed Nard was the only witness, described his testimony as intricate and complex, described other members of the grand jury as being confused about the case. Her impression was that the other jurors were bewildered. And she stated, "I believe they were thinking he was trying to pull something over." She also recalled this assistant U.S. attorney telling them at some point that the Nard matter would no longer be pursued. Further, he left them with the impression that the U.S. attorney's office questioned Nard's veracity and truthfulness, but she could not specifically recall what he told them.

Be that as it may, the question that comes to mind, assuming that those are relevant—and I think anybody would have to make their own conclusions on that—who presented Nard's case to the jury, you or Mr. Nard? And would his allegations have been given a complete hearing if Mr. Nard as a non-lawyer had to present his own case or had the burden of presenting the convincing evidence to the grand jury himself?

My question is, had you investigated, as we have, Mr. Nard's allegations, and did you present the evidence that he has to the grand jury about the possible Armour perjury, and how did you do it? Did you leave it up to the complainants themselves to present the burden of the cases, or did you try to make out a case?

Mr. **Hultman.** Absolutely not. I gave it, and we gave it the very best shot.

I think my own reputation of trial experience, of grand jury experience, of criminal experience, is of such a nature that it puts it in the light of that kind of a responsibility and that kind of a conclusion.

Again, here are a couple of the problems; and I think probably you can appreciate it again, maybe because of the fact that you have had some association.

He wants to be his own lawyer during this whole period of time. He was the driving force all the time. He would call; he would give you lists; he would go different directions in trying to get things pulled together.

That is why I basically went to the documents themselves, because we were involved with two trials and all kinds of hearings, motions, and so forth. So there was a mass of specific evidence, which is what he was primarily concerned about.

On most cases you start out, the case begins, the witness comes in, and the next witness, and so forth. Here you are dealing with extended testimony by the witnesses, most of the witnesses in two previous suits and all kinds of hearings. So you are not just in the posture of relying on Jack Nard, but you at the same time, because he is involved in so many other things—he is a primary witness.

As you and I know, if you cannot get by with credibility in your primary witness in a case, you are in trouble.

I from the beginning had faith in Jack Nard's case, and I think Jack Nard—if he would answer that question truthfully—would say it, because I saw a document in his file on Tuesday that he had written to the Department of Justice in April or May 1975 complimenting me and telling the Department of Justice that I was tough, I was a so-and-so.

Senator **Hatch**. And you agree with me then that he probably was mistreated?

Mr. **Hultman**. No, I do not come to that conclusion at all. That is the different conclusion that you and I come to, and that is the different conclusion that jurors come to, and that is the different conclusion that judges come to.

Senator **Hatch**. Let me move on to another factor—how is our court reporter doing?

Court reporter. OK.

Senator **Hatch**. OK? You let me know if you need a break. I have been very inconsiderate to you, and I apologize. You just wave to me if you need a break.

Senator **Grassley**. I want to follow up on this.

Senator **Hatch**. Sure.

Senator **Grassley**. Are you saying then that in some complimentary letter that Nard wrote he was satisfied with your investigation up to that point or even beyond that point?

Mr. **Hultman**. I do not have the letter, but in that file—if anybody looks through it—is a letter sometime in the spring of 1975 from Jack Nard to the Department of Justice. In that letter he is very complimentary concerning me, and he is saying that he wished some other people would be doing the same thing.

Senator **Hatch**. Let me say this: I have looked through some of that too, and I remember—I cannot remember when I came to Waterloo to visit with you, and you did, I think clarify—you admitted to me that you really believed the case that time and you were going to nail them.

Mr. **Hultman**. I felt that.

Senator **Hatch**. You believed they had committed perjury?

Mr. **Hultman**. I felt that way, and that is why I kept——

Senator **Hatch**. But Nard told me right up to the—I cannot remember, but I think up to 1975—that you were continually telling him you were going to do that—you were going to get them in a grand jury. And I kept thinking to myself, "Well, if he is going to get them, when is that going to occur, since he has had the case all these years?" I have looked at it, and I have to admit that I think there is a case.

Let me move on. He had great faith in you. He kept telling me that. Let me just say this: I would like to discuss an area we covered in the December hearing.

Senator DeConcini asked you about your presentation of evidence to the grand jury on the possible perjury of William Bossenberger, the Armour expert witness in that case. Let me refer you to your testimony on December 11. That would be page 19, lines 3 through 11. Are you with me?

Mr. HULTMAN. Yes. Go ahead, sir.

Senator HATCH. Senator DeConcini says:

> In any event, to summarize that part of it, you made a decision as the prosecuting attorney that in your judgment there was a good possibility of perjury and you wanted the grand jury to look at it?
>
> Mr. HULTMAN. Absolutely. We presented everything that we could pull together and everything that Mr. Nard had in terms of presenting anything by way of any information to them.

Mr. Nard not only claimed that William Bossenberger committed perjury as an expert witness for Armour but that Armour had suborned his perjury. Do you know how much money Armour paid Bossenberger for his Sioux City testimony and related expenses?

Mr. HULTMAN. There is an exhibit that indicates that, sir.

Senator HATCH. Let me refer you to that.

Mr. HULTMAN. It is exhibit 13.

Senator HATCH. That is exhibit 18.

Mr. HULTMAN. Eighteen—I am sorry. My copy is not too good.

Senator HATCH. This is a statement from Mr. Bossenberger's engineering firm wherein the fees charged by Mr. Bossenberger to Armour for his services as an expert witness are listed. I might point out that the total is $23,179. We will put that of course, along with all other exhibits at the appropriate places, in the record.

[Exhibit No. 18 follows:]

HEARING EXHIBIT #18

BOSSENBERGER RIETZ CONSULTING ENGINEERS

2500 FORD STREET
AMES, IOWA 50010

statements which we have sent to Armour and Company:

2/16/71 Trial related, Sioux City Plant
213 hours @ $12.50 = $2,662.50
Direct expenses = 321.87
$2,984.37

7/6/71 Meeting with Sioux City building official
Engineering fee = $ 200.00
Direct expenses = 58.60
$ 258.60

7/6/71 Engineering analysis and design for lateral stability, Sioux City Plant
Engineering 280 hours @ $12.50 = $3,500.00
Drafting 209 hours @ $8.00 = 1,672.00
$5,172.00

11/4/71 Engineering analysis and design for lateral stability, Pittsburg Plant
Engineering 441 hours @ $12.50 = $5,512.50
Drafting 37.5 hours @ $8.00 = 300.00
Direct expenses = 374.64
$6,187.14

9/25/72 Hearing before Board of Engineering Examiners
91 hours @ $15.00 = $1,365.00
Legal expenses, etc. = 3,791.63
$5,156.63

10/11/73 Engineering analysis and design of beam connections revision, Sioux City Plant
Engineering 234 hours @ $12.50 = $2,925.00
Drafting 62 hours @ $8.00 = 496.00
$3,421.00

BOSSENBERGER RIETZ CONSULTING ENGINEERS

William H. Bossenberger, P.E.

WHB/djs

2984.37
258.6+
5172.+
6187.14+
5156.63+
3421.+
23179.74

Senator **Hatch**. Do you think it would have been pertinent to the grand jury's consideration to know that Mr. Bossenberger was paid over $23,000 for his services as an expert witness in the case?

Mr. **Hultman**. I do not know. My conclusion as I look at it here in the courtroom today, Senator, does not trouble me at all.

Senator **Hatch**. It does not?

Mr. **Hultman**. No.

Senator **Hatch**. You do not think that is excessive?

Mr. **Hultman**. If you look and analyze it—and I have got to assume that if you as an attorney submit a bill of this kind, and I do too, that it is submitted in good faith. If you look and see how it breaks down——

Senator **Hatch**. Let me say, I have been in a lot of trials, and I have seen a lot of expert witnesses, but——

Mr. **Hultman**. Let me show you here how it breaks down. It is not one trial with a witness in one trial. The first item is trial time. The second one here refers to another subject matter: Meetings with building officials. Another one has to do with analysis and design of the plant itself and how many hours involved. The next one is analysis and design on the other plant. One is on Sioux City; one is on Pittsburgh. Then you have the hearing itself which came about.

Let me say there that somebody has interpreted from one of the exhibits that I am the guy taking all the credit, but the only real justice in terms of anything that favored Mr. Nard grew out of what I did, what I suggested, and what I helped do.

I did not mean to leave the impression in the December testimony that I was the guy who was a lawyer who went with Nard to handle the engineer matter before the Iowa Engineer Examiners.

What I was trying to say was that but for me that event in my judgment would not have happened, because I was the guy at the time who felt here was another remedy. I felt that he had a remedy that he should get. I did everything I could in terms of giving him information, talking to him, calling the attorney to set up at the agency itself for a hearing, and indicating further I felt there was merit and strong merit in what he was then going to come before that committee with.

What I am now getting back to is, I think you can come to a double conclusion on this. This part did not trouble me; let me say that. What troubled me—and I do not know whether I have ever seen this or not before; my memory is not that good—but what troubled me was the testimony, and that is what I was trying to say.

Senator **Hatch**. He testified that the building was going to blow down.

Mr. **Hultman**. That is right. That is exactly what concerned me in the testimony of the engineer.

Senator **Hatch**. Do you think it would have been pertinent under those circumstances to tell the grand jury that Mr. Bossenberger was paid over $23,000 for his services to basically tell them the building was going to blow down when everybody else knew it was not?

Mr. HULTMAN. They did have access to the information of what his testimony was, and so forth, and so on. I cannot recall anything about exhibit No. 18. I do not recall anything about this.

Senator HATCH. OK. Do you think it would have been pertinent to the grand jury's consideration to know that Armour & Co., paid for Mr. Bossenberger's legal expenses when he was censured by the Iowa State Board of Engineering Examiners for "culpable overstatement"?

Mr. HULTMAN. I think that has some degree of relatively—yes. I do not know how much of an impact it would have, because again people are entitled to——

Senator HATCH. I think it would have a heck of an impact myself.

Mr. HULTMAN. People are entitled to fees. To be fair now in both directions, this does not necessarily say that there is anything in what the hours are, for that is not correct. I am agreeing with you that I think it is an element that judgment-wise in terms of the grand jury could be an item of consideration.

Senator HATCH. Do you think it would have been pertinent to the grand jury's consideration to know that Mr. Bossenberger was paid, again, almost $6,200 for the same type of work in preparation for testifying against Nard in the Pittsburgh civil suit, and do you know why Bossenberger really never testified against Nard?

Mr. HULTMAN. I have no idea, sir.

Senator HATCH. Do you think it would have been pertinent to the grand jury's consideration to know that Armour did not find out that Clarence Scranton, who designed both the Sioux City and Pittsburgh plants for Nard, was a senior design engineer for the American Bridge Division of United States Steel until after the Sioux City trial but before the Pittsburgh trial?

Mr. HULTMAN. We are now talking about things that—if we are going to go retry the case——

Senator HATCH. I think it is important.

Mr. HULTMAN. Wait a minute now. If what you are saying is specific evidence and it is pertinent, the answer is clearly yes. The nature of the question indicates that.

But let me say to you that that evidence you are just referring to, I am assuming, was known to somebody during this period of time; and to my best recollection one fellow named Jack Nard had that kind of knowledge.

Senator HATCH. I see.

Mr. HULTMAN. What I am saying is, that is a perfect illustration of why he is so important—because so much of what you are dealing with in this set of circumstances is related directly or indirectly to Jack Nard.

I cannot sit here and tell you what all of the evidence was that was presented. By law we cannot—by the restrictions and so forth. But I am also saying to you, even if I could, I at this particular time cannot recall back 10 years ago in the areas of evidence that you are now talking about.

Senator HATCH. Did you know, Mr. Hultman, that really the U.S. attorney's office did not obtain these figures from William Bossenberger's firm until 1977? You did not know that?

Mr. **Hultman.** I did not—no. That is what I am saying; I have no knowledge of this.

Senator **Hatch.** Then I would like to enter for the record the Iowa State Board of Engineering Examiners' official reprimand of Mr. Bossenberger when they conclude that his testimony was "simplistic and incomplete" and "misleading and a culpable overstatement."

[Exhibit No. 19 follows:]

HEARING EXHIBIT #19

Iowa State
Board of Engineering Examiners
Des Moines, Iowa 50319

CITY
ECKERT, VICE CHAIRMAN
RAPIDS
LACK
ST, JR.

W. C. WELLMAN
SECRETARY

May 19, 1972

Mr. William H. Bossenberger, P.E.
1938 Maxwell Avenue
Ames, Iowa 50010

RE: In the Matter of
William H. Bossenberger,
Professional Engineer,
Iowa Registration No. 4813

Dear Mr. Bossenberger:

You are hereby advised that after examination of the re[illegible]rd and review of the evidence in the above referenced matter, the Iowa S[illegible] Board of Engineering [illegible]aminers finds you guilty of Misconduct in accordance [illegible]n Code of Iowa, [illegible]c. 114.21 (1971). By Order of the Board, a copy of which is enclosed, you [illegible]e hereby formally reprimanded.

It is the conclusion of the Board that your testimony in the case of ARMOUR AND CO. V. NARD was simplistic and incomplete. Because of this, your testimony was misleading and a culpable overstatement.

Providing expert testimony in a Court of Law is not inappropriate for a Professional Engineer. However, testimony under oath that a structural design is inadequate to support a building must be viewed as a serious charge, and for this reason it needs to be grounded upon substantial evidence, which includes the building's actual structural behavior. Professional conduct in the public interest levels such serious allegations very sparingly, and then only with undoubted reason. Once such accusations are made, professional conduct does not admit of misleading, overstatements of fact or overt simplifications. It must be remembered that a Professional Engineer's primary responsibility is to the public; responsibility to a client is a secondary thereto, especially when the interests conflict. This responsibility to the public is the very nature and basis of a Professional Engineer's right to practice.

Sincerely yours,

Noel W. Willis

Noel W. Willis, P.E.
Chairman

Senator **HATCH**. Do you feel it would be appropriate for this committee to ask you why you never called Mr. Bossenberger before any of your three grand juries? And you might be willing to explain that for us if you do not feel it would infringe on rule 6(e).

Mr. **HULTMAN**. I think it would clearly infringe on rule 6(e).

Senator **HATCH**. You do not think you can give us any indication why you did not call Mr. Bossenberger when you were trying to prove perjury and you had even his own engineering association—the Iowa State Board of Engineering Examiners—basically calling him a liar?

Mr. **HULTMAN**. Let me take it the way it went. No, I do not think I can, is my answer; but let me within some limitations here.

We came to a conclusion based upon the best knowledge we had—you are dealing with an expert—that we could not get to the end line. In addition to that, Senator, that very issue was litigated and a Federal district judge—again, if they are all wrong we do not need to go any farther——

Senator **HATCH**. The Iowa State Board of Engineering Examiners said that he was wrong.

Mr. **HULTMAN**. But they did not say he committed perjury. That was not the conclusion of the Iowa Board of Examiners.

Senator **HATCH**. What would you call "culpable overstatement"?

Mr. **HULTMAN**. I want to refer you, if you will give me an opportunity—that very issue was decided, not by me or not by you additionally, but by a Federal judge, Judge McManus. If you will go to your exhibit—and I would like to find it here—you will find that he sets out what the standards are. He finds even on the civil side of the house, let alone on the criminal side of the house, that it does not reach to that level.

That is my answer and my best response to you in the process.

Senator **HATCH**. Let us assume that Mr. Bossenberger could not be prosecuted for perjury because he was giving opinion testimony as an expert witness. Could you not at least have used his testimony to establish important facts regarding the possible subornation of perjury by the Armour officials who paid him more than $23,000 for his misleading and culpable overstatements at the Sioux City trial?

Mr. **HULTMAN**. Well, that is the conclusion that you draw; and I am not going to sit here and argue with you about it. Each of us would come to a different conclusion here on this particular point.

Senator **HATCH**. All right.

Senator **GRASSLEY**. Mr. Chairman, there is only $3,000 of that $23,000 that is trial related.

Mr. **HULTMAN**. That is correct.

Senator **GRASSLEY**. $29,084.37.

Senator **HATCH**. The document will speak for itself. It is still $23,000 for an expert witness in a trial where his own engineering society censured him.

I would like to clarify just who in your office concluded that Mr. Bossenberger could not be charged with perjury. I will refer you to your statement in December on page 17, line 9, through page 18, through line 6.

Mr. Hultman, starting with line 9: "The grand jury concluded that they did not feel that there was a violation of the Federal statute of perjury. We had trouble ourselves on the staff. In fact, what I would call on a small staff my 'legal expert,' he looked at the legal aspect of it very carefully and he came to that conclusion also."

Senator DECONCINI. Is that Mr. Kirshen?

Mr. HULTMAN. No, not Mr. Kirshen. Mr. Dan—I'll think of his name as we go along here in a moment.

Senator DECONCINI. Mr. Sikma?

Mr. HULTMAN. No, he is the first assistant who handled part of it. I will think of his name in a moment.

This was his only participation in it, to look at a legal issue.

We concluded that on the legal side of the house—at least it was his feeling—that where you were dealing with an expert and his testimony as an expert, giving a judgment or a conclusion, that you are in a very much different position than you are where somebody is basically in a normal perjury situation testifying to an item of fact or an event and all the ramifications that go with that in terms of its being a material fact and knowing under oath, and so forth.

Do you remember, was it Dan Cutler you were——

Mr. HULTMAN. If you would let me—we never got back to a conclusion on this; we moved on to other things.

What was coming to my mind, again, trying to search back 10 years—let me tell you, in order to get to the answer here, the way I operate in my office.

I tried to have one legal expert. What I did from the first day I came into the office until I left, I tried to get one fellow who was good in that area, because I think in a small office you need that kind of a guy.

Most of the time he had been, one, a judge in the lower court sense of the word; or, two, a law clerk for a Federal judge, because we are dealing in the Federal law. Alan Kirshen was a clerk for a Federal judge.

In answering this, I was going back, trying to lead back from the present time when I left, to go back to the time we are talking about and who that assistant would have been. I never did get to a conclusion, so we never got to that point.

In thinking back on it, after the testimony there is no question in my mind now that it was Mr. Sikma, the reason being that back at the time we were talking about before I hired Alan Kirshen he was the only guy that I had in this capacity, and he was a former military judge. He had been selected as the first Marine Corps judge under the new code.

When Senator DeConcini went down the list, I was not thinking of Sikma in that sense because he had been my first assistant really during the whole period.

Senator HATCH. I just want to know who it is.

I would like to introduce the notes of the Secret Service interview of your personal secretary Martha Dalstrum. That is hearing exhibit No. 20.

[Exhibit No. 20 follows:]

HEARING EXHIBIT #20

MARTHA DALSTRUM was interviewed on July 9, 1979, by David H. Nozhesky at the Des Moines Resident Agency, Des Moines, Iowa. Contact was made with her by telephone at her place of employment, Internal Revenue Service, General Counsel's office, Des Moines, Iowa, telephone 515/284-4783. She agreed to voluntarily appear at the Des Moines Resident Agency, stating she preferred to be interviewed there.

Dalstrum advised she was a personal secretary to U. S. Attorney Hultman. She began in July or August of 1974 in Waterloo, Iowa. She would sometimes travel to Sioux City or Cedar Rapids if Hultman requested her to because of Federal Grand Juries or other official matters.

She recalled the Grand Jury investigation of the Jack Nard matter. Assistant U. S. Attorney Alan Kirshen was primarily responsible for the early part of the investigation. However, U. S. Attorney Hultman took over the case and was the only one to handle it later on. She recalled that, at the beginning, U. S. Attorney Hultman discussed the case with her and told her he believed Nard had substance to his complaint, and his complaint had far reaching effects. Political figures were believed involved. She was aware of the Pittsburgh indictment regarding Nard's income tax.

Dalstrum indicated she prepared all subpoenaes in connection with the Grand Jury. Some witnesses in this case were told not to come. She recalled, for example, that "one was an important company official" and would have had to change his schedule. He was told to cancel. Although she did prepare subpoenaes and made arrangements for some witnesses to cancel or appear, she had no idea of what or who went into the Grand Jury. To the best of her recollection, about five witnesses were subpoenaed, but only one or two actually appeared. Dalstrum insisted that which witnesses were called and whether or not they were cancelled was a judgment call on the part of U. S. Attorney Hultman.

Dalstrum recalled that, on one occasion, U. S. Attorney Hultman walked into the Cedar Rapids office and said the Grand Jury wanted to hear no more about the Jack Nard case. Nard frequently called Hultman, but after a period of time she heard no more from him.

Dalstrum believed, from her experience, that the case was routinely handled. She emphasized that she took all telephone calls for U. S. Attorney Hultman; and, to her knowledge, he received no calls from anyone making inferences to shut down the case. She insisted that the case was not handled any differently than any other matter before the Grand Jury or in the U. S. Attorney's office.

All files concerning the Grand Jury investigation of the Jack Nard matter were kept in Waterloo. However, there was a voluminous file which was sent to the Sioux City office to be retained. To the best of her recollection, there were about two boxes of documents and notes.

Dalstrum also typed most of the indictments for the Grand Jury. To her knowledge, no indictment was typed in the Jack Nard case. She recalled allegations regarding Nard's plea in the Pittsburgh tax case. This occurred before her employment with the U. S. Attorney's office. Dalstrum did mention that she was bewildered by reports in this case. Customarily cases going before the Grand Jury had reports from various investigating agents. This case was different in that respect. She never saw any investigative reports from agents. Although she knew about the case generally, she never really knew what the specifics of the case were. Much of what she knew came from overhearing various conversations in the office and from Nard who was frequently seated in her office (reception area).

Dalstrum suggested U. S. Attorney Hultman's telephone log be reviewed. She claims to have kept a meticulous record of telephone calls to U. S. Attorney Hultman. This log would have been sent to Sioux City with the other records of the Jack Nard case. She recalled some telephone contact between U. S. Attorney Hultman and Richard Thornburgh, then Criminal Division Chief at the Department of Justice. She believed these telephone contacts were in connection with a major trial being held in Cedar Rapids.

Although she could provide no additional information, Dalstrum concluded by saying she never saw or overheard anything that was improper regarding the handling of the Jack Nard matter.

Senator Hatch. She was interviewed on July 9, 1979. We will introduce her whole statement or interview in the record, but in the third paragraph, the next to the last sentence, it says, "She recalled that at the beginning the U.S. Attorney Hultman discussed the case with her and told her he believed Nard had substance to his complaint, and his complaint had far-reaching effects. Political figures were believed involved. She was aware of the Pittsburgh indictment regarding Nard's income tax," et cetera.

You are aware of that?

Mr. Hultman. Yes.

Senator Hatch. Also on page 2, in the third paragraph, about the fourth or fifth sentence down:

> Dalstrom did mention that she was bewildered by reports in this case. Customarily, cases going before the grand jury had reports from various investigating agents. This case was different in that respect. She never saw any investigative reports from agents.

With regard to the third paragraph of the second page, why did you never utilize the FBI for this investigation? Just to give you two questions at the same time, would not investigative agents be needed for a subornation of perjury investigation?

Mr. Hultman. In answer to your first question, you have been showing me reports of one kind or another here, and I saw quite a number that were FBI reports; so they did have a part to play in the course of the investigation.

Senator Hatch. Those were made subsequently though.

Mr. Hultman. No, they were back in 1971 or 1972. You showed me a whole group of them here, and they are exhibits here.

Senator Hatch. I thought you were referring to the ones——

Mr. Hultman. OK. So Martha Dalstrum likewise was incorrect in her observation, if she ever looked in the file at all. She would be a person trying to be very fair and so forth.

The second part of your question is that this was an investigatory type of grand jury, and I proceeded, as I think Jim Reynolds in the beginning proceeded the same way in his grand jury investigation at a later time and then did make a shift in the direction that he was going and the technique.

In an investigatory grand jury I very frankly felt this was the proper way to proceed, and I will tell you why: For a number of reasons. One of them is the fact that during this period of time we have got civil suits going on.

This again was a matter that troubled me and concerned me very greatly because of the fact that it was one of the fundamental premises—and you know this as well as I do as a lawyer—that the strong arm of the Federal Government should never be used to assist civil litigants. That is so basic and fundamental. So this was part of it.

Second, because we were dealing with an investigative grand jury, this was the method and the approach which seemingly from our standpoint was the one that was best used.

That is the $64 question. I am not sure, with the knowledge I have got now and having gone through it, whether or not I would take that same approach again.

Senator Hatch. I see.

Mr. Hultman. I mean that very sincerely.

Senator HATCH. I understand, and it makes me want to ask, would not investigative agents of the grand jury, such as the FBI, have been able to uncover some of this financial information that we have just been discussing, such as the amount of money and legal assistance Armour provided to William Bossenberger?

It just seems to me that in a case of this magnitude, where you believed there was perjury and you believed in Nard but yet you were having difficulty getting Mr. Nard to sit down and go logically through his testimony—and I believe you on that—would it not have been much more effective to get some investigative agents in on the case?

Mr. HULTMAN. Let me also say that as you go through the FBI exhibits there at an early time, you will note that—at least it seems to me because I do not have the files and I just had a short time to look at them on Monday afternoon—there was again, it would appear to me, some reluctance on the part of the agency along the line. That is a long time ago, and I am really reaching now, but as I look at those documents, it does seem to me that there were some problems in terms of what part the agency itself felt they should or should not play.

That is no answer to your question. I am just giving you again——

Senator HATCH. I understand that, and I accept it, and it is not an answer because the Bossenberger records were uncovered by Mr. Reynolds' office after he became U.S. attorney.

Mr. HULTMAN. The what, sir?

Senator HATCH. The Bossenberger records.

Mr. HULTMAN. The only one I know about is the financial record you are talking about.

Senator HATCH. Which you could have obtained had you had good investigators to put on this. Of course that is second-guessing, but still, here is a situation where you believed in the man's case; you believed there was perjury; you believed there was subornation of perjury. In fact, the documents showed that. Various witnesses showed that. Yet you did not ask for any investigative people.

Let me move to another thing.

Mr. HULTMAN. Well, we did at certain times. Again, you showed as one of your exhibits here a specific request—I remember one here today even with reference to—again, I do not want to use the name, but one of the exhibits specifically refers to Mr. Kirshen making a specific request FBI-wise.

Senator HATCH. OK.

With reference to the third paragraph on that second page of Ms. Dalstrum, since she was quoting you, what political figures did you believe were involved that would have far-reaching effects?

Mr. HULTMAN. The only thing there that I can give to you from any knowledge of any kind is the allegations of Jack Nard.

Senator HATCH. I see.

Mr. HULTMAN. Let me say to you again Jack Nard would come in, and he would sit, without anybody even knowing he was coming in. It is a two-room office. The secretary is inside the door, and the second room is the U.S. attorney's. He would talk to her during the periods of time until he would have the opportunity to see me.

He was constantly talking about things at high levels, and it was usually what had appeared in the news the day before. He was a great follower of events of significance, and in my judgment he had no proof of any kind when I would ask him, "What can you show me?" et cetera, et cetera. There was nothing there. That is what I think she is probably referring to.

Senator **Hatch**. The time frame of Ms. Dalstrum's employment here is the summer of 1974, the time preceding the third grand jury.

Mr. **Hultman**. Yes, that is the period that it is in.

Senator **Hatch**. Apparently up to that date you still believed in Nard's allegations or at least up to this point and maybe even beyond—correct?

Mr. **Hultman**. Senator, there is no question that after the first grand jury—Mr. Sikma was involved in that period of time, and then Mr. Kirshen in the second grand jury—that I again reasserted myself in the third grand jury, because very definitely I wanted to do my very best at that time, because I still felt up to that point—and there was not any question about that.

Senator **Hatch**. Senator DeConcini asked you several questions in December regarding the witnesses you called before the three grand juries that considered this matter. Maybe I could refer you to your testimony on page 28.

Senator **Grassley**. Mr. Chairman, before you leave Martha Dalstrum, I want to make reference to two sentences from page 2 of her FBI investigation report. It says, "She insisted that the case was not handled any differently than any other matter before the grand jury or any U.S. attorney's office." That is at the top of page 2. The very last sentence on page 2 says, "Although she could provide no additional information, Dalstrum concluded by saying she never saw or overheard anything that was improper regarding the handling of the Jack Nard matter." I just want to bring that out.

Senator **Hatch**. That is fine.

One thing I would just say is that you said you did everything you could to present his case; you believed his case right up to 1975; but yet the grand jurors in the first grand jury and the second grand jury did not even recall anything pertaining to perjury or any attempt to prove perjury.

You have explained that—that you apparently feel that they either did not understand or it was too complex for them.

Mr. **Hultman**. What I am saying is that their recall from a period 5, 6, 7, 8 years later too——

Senator **Hatch**. Yes, but they seem to recall an awful lot of specifics here and nothing about any intent to prove perjury.

Senator DeConcini asked you several questions in December regarding the witnesses you called before the three grand juries that considered this matter. Again, let us go to page 28, beginning with line 23:

> Mr. **Hultman**. Yes. Now, again, by your opening statement, it would indicate to me that there were no witnesses called. I don't have the record here, but the record of witnesses subpoenaed at the grand jury would clearly indicate key witnesses were brought before the grand jury. In fact, I very carefully, with John Nard, went over specifically with him which witnesses he felt were the most critical and the most significant, and those very witnesses were brought before the grand jury and were questioned before the grand jury.

Also to clarify to this point, on page 33, beginning with line 9, Senator DeConcini asks you, "Where did you get those witnesses from?"

Mr. HULTMAN. From John Nard and from my analysis of the massive transcripts, the books, et cetera; yes. It was a combination of what my analysis was and what John Nard's recommendations were in terms of certain witnesses that would testify to certain things.

Based on the material your office requested that Nard provide in these notebooks, it is apparent that you or at least your office was investigating Nard's allegations in both Iowa and Pennsylvania.

It is also your testimony that you went over specifically with Nard which witnesses were the most critical and the most significant, and those witnesses were brought before the grand jury and questioned before the grand jury.

I would like to introduce the grand jury assignment sheets for docket number H77, the Nard investigation, for your two grand juries in 1972 and 1973.

We have removed the names of those people involved as defendants and witnesses before the grand jury in other cases listed on those grand jury sheets. That would be hearing exhibit No. 21. We will put that in the record at this point.

[Exhibit No. 21 follows:]

HEARING EXHIBIT #21

CEDAR RAPIDS, IOWA

Grand Jury Assignments for MARCH 20, 21, 22 19 72

	PARTIES	WITNESSES FOR U. S.	REMARKS—DATA
875	UNITED STATES vs. 50A 462 Fail. to Report for Civilian Work	, Major E. J.	TRUE BILL NO BILL
876	UNITED STATES vs. 1201 18 USC Kidnaping 2312 18 USC NMVTA	, Mary Kay , C.R. , FBI	TRUE BILL NO BILL
877	UNITED STATES vs. WILLIAM H. BOSSENBERGER 18 1621 USC - Perjury 18 1622 USC - Sub. of Perjury	ZAREMBA, D.E.	TRUE BILL NO BILL

CEDAR RAPIDS, IOWA

DOCKET No.	PARTIES	WITNESSES FOR U. S.	REMARKS—DATA
Contd)	**UNITED STATES**		True Bill
	vs.	~~ARMOUR & CO. R.O.~~	
	WILLIAM H. BOSSENGERGER et al.	CARAMANOS, Peter	
		McKAVIS, William R.	
	18 1621 Perjury	MESSENGER, Frank	No Bill
	18 1622 Sub. of Perjury	ZAREMBA, Daniel E.	
	UNITED STATES		
	vs.	, Dale IRS	True Bill
		, Duane IRS	
	Transferred to So Dist Iowa		
			No Bill
	UNITED STATES	, Tina M.	True Bill 19
	vs.	, Leonard	
		, Maynard	
		Lewis	
	18 2113	L. L.	No Bill 2
	BANK ROBBERY	, John	
		Martin J.	
		Betty Jane	

Senator HATCH. As we already have mentioned, the only witness to testify in the 1972 grand jury was Daniel Zaremba. The 1973 grand jury sheet lists four names as witnesses for the United States: Daniel Zaremba, Frank Messenger, William McKavis, and Peter Caramanos.

Caramanos, McKavis, and Messenger had nothing to do whatsoever with the Sioux City litigation. I think you said that is your understanding.

Mr. HULTMAN. Well, Senator, I do not agree with that conclusion, but we would be here forever arguing that. OK.

Senator HATCH. It looks to me that part of it was an investigation into Nard's Pittsburgh allegations but did not at all factually intermesh with Sioux City.

Although all four of these men were subpenaed and came to testify, not one of them actually testified before the grand jury.

I ask this question: Why did you subpena them to the grand jury and then not have them testify?

Mr. HULTMAN. This is the second grand jury that you are now talking about, and that is the Alan Kirshen grand jury, so I do not have all of the background let alone all of the recollection. But let me answer that question to the best of my memory and according to the various documents that are here that shed light on the question you are now asking me.

As I indicated on one of the reports of the exhibits of yours, you would analyze the records of the cases—that is, the testimony—and from that, together with what Mr. Nard indicated and what you would conclude from it, you would draw conclusions and from that then make decisions on which witnesses should be called. The first one of those that was of great significance was Daniel Zaremba, and he was called.

This would not show on this new hearing record today, but pages—let me get the pages here.

Senator HATCH. While you are talking about Zaremba, remember we have investigated and chatted with him, and he also told the Secret Service that he was never asked any questions pertaining to perjury.

Mr. HULTMAN. Again, that is your conclusion.

Senator HATCH. That is a fact. He will testify that he was never asked a question pertaining to perjury.

Senator GRASSLEY. Are you talking about hearing exhibit 15? It does not say that.

Senator HATCH. No. We are talking about our investigation.

Mr. HULTMAN. We are talking about Zaremba.

Senator HATCH. We are talking about Zaremba and what he would say. He also would testify that he felt Jack Nard was wronged.

Mr. HULTMAN. That is right. He testified to that.

Senator HATCH. In both cases.

Mr. HULTMAN. He testified to a lot of things. That is what I said. What I am saying is that that was the first guy on the list; and according to the witnesses indicated by him and what they would testify to, as found on pages 53 to 60 in the first hearing, he says he knows it all. Well, that just did not happen to be the case.

If you will go to the Secret Service's most recent interview, it says, "Zaremba did not feel that there was any effort to sabotage Nard." This is just a small written-up review that Secret Service agents make.

The point I am trying to make is that Zaremba was not all the witness that somebody told me he would be, to be very frank and straightforward about it. The testimony that I got from Zaremba and the personal interviews of him differed in many instances from what somebody says he is going to testify to. That is kind of the way the law business is and witnesses are many times.

Senator HATCH. Unless they are asked. Why did you not call these four witnesses up? How often did you subpena witnesses that did not testify before your grand jury, and how do you reconcile the fact that none of these four testified——

Mr. HULTMAN. I said to you, Senator——

Senator HATCH. You said that all critical witnesses——

Mr. HULTMAN. No; I said to you in response that this was Mr. Kirshen's grand jury and I do not have the knowledge of the reason why. I tried to make that clear to you in the beginning.

But I am also indicating to you that key witnesses were called, they were interviewed, and key witnesses were brought before a grand jury.

Senator HATCH. I admit you do not know why, and I accept your statement on that, but four witnesses critical to Nard were called, subpenaed, and not one was asked——

Mr. HULTMAN. Critical to Nard—you are drawing a conclusion already.

Senator HATCH. Well, he claims critical. The fact is that not one of them was called as a witness. Is that fair to Nard? Is he getting the kind of fair treatment he deserved, if you are going to expend the money to subpena them and get them there and then not even call them as witnesses, when he said they were critical witnesses to his case?

Mr. HULTMAN. Senator, as I said, I am not going to try to second guess or go back, because I was not the one.

If you will go to the next grand jury and the witnesses that are called there, again you will find three grand jury sessions that I held, and you will find that six witnesses were called. They did go before the grand jury, and they were key ones——

Senator HATCH. But let us go back to this for a minute. You told the committee in December that you did not even have a court reporter in the grand jury because of budget constraints, yet in this instance your office subpenaed four witnesses to Cedar Rapids then released them without testifying. Mr. Caramanos was flown in from Puerto Rico to testify.

Mr. HULTMAN. Let me tell you, Senator, that shows you how far we actually went to try and get witnesses——

Senator HATCH. But——

Mr. HULTMAN. Let me finish if you would, please. I have listened to you.

Senator HATCH. OK.

Mr. HULTMAN. And I think you have asked me to come here to respond.

Senator HATCH. I have.

Mr. HULTMAN. It shows you how far we even went to try and get the testimony when, as you say, "You went clear to Puerto Rico," and that was no small doing.

Now let us get to the point that you are making about budget. There is a clear difference, as I think maybe there is in the case of your Senate staff and other things within you that you have within your budget—the capability of line items of a certain kind or nature to do with. That is true of the U.S. Attorney's Office.

When you come to other things like witness fees, transportation, and so forth, those things are over here, and either the marshal or the court—and I do not remember how the breakdown comes. So the two are not related in any way, and you cannot mix line budget items that do not belong to you.

So my answer on the point you are just now making is that that is comparing apples and oranges and does not have anything to do with anything.

Senator HATCH. The important point is really not whether you are saving budgetary funds. It is apparent you did not in the case of witnesses. You did not even call them, or Mr. Kirshen did not.

Mr. HULTMAN. And we went that far.

Senator HATCH. I understand, but that seems certainly strange, and it does not seem like it was very fair to Mr. Nard. If you did not know anything about it, again it looks as though Mr. Kirshen has certainly let Mr. Nard down.

Mr. HULTMAN. I do not conclude that at all.

Senator HATCH. I understand.

Mr. HULTMAN. Senator, there are many witnesses that I talk to as a prosecutor that I have subpenaed for a grand jury that never get in the grand jury for a number of reasons—all kinds of reasons. Let us talk about them for just a moment.

Senator HATCH. Ms. Dalstrum gives one. She told the Secret Service who was "an important company official" would have to change his schedule to appear before the grand jury, so you canceled his appearance. Was that a standard procedure for your office?

Mr. HULTMAN. No, but we do accommodate people at times, the same as I would hope any office or public agency would do.

Senator HATCH. Look, Mr. Hultman, you began the Nard investigation in March 1971. Two years later in March 1973 you had completed two grand juries, and yet only one witness had testified. His name was Daniel Zaremba.. He turns around and tells the Secret Service—keep in mind, this is the only case, that I know of, he was involved in. He is not an attorney and not likely to forget the cases. He told the Secret Service that he did not believe that perjury was the focus in the grand jury.

The question is, do you think that this was really a vigorous prosecution of the case? You told your own secretary it involved political figures who had far-reaching interests; and you told your own secretary——

Mr. HULTMAN. Wait a minute. That is in 1975 you are now talking about. Martha Dalstrum was not even there at the earlier period.

Senator HATCH. So two early grand juries early in the matter, when you claimed that you were strongly in belief of Nard—you told me that personally yourself back in those days, and you admit that you strongly believed it right up to 1975.

Mr. HULTMAN. I would like to read into the record, so that it is not missed, the decision I was referring to a while ago—exhibit 7—which indicates the fruition of the original grand jury and where we were going.

This is in Judge McManus' opinion which is a part of exhibit 7, where he quotes on lines 7 and 8, or at least it is set out on lines 7 and 8 and sections 7 and 8, that,

> The burden is on the moving party to support the allegation of perjury by clear and convincing evidence. In light of the timing of this motion and briefs of counsel, it is clear that the defendant relies on the action of the Iowa Board of Examiners to carry the burden. Having examined the entire record, the Court does not view the Board of Examiners' action as "clear and convincing."

He took a different point of view than you as to the evidence of perjury, fraud, or even misconduct:

> The labeling of a portion of Mr. Bossenberger's testimony as simplistic and incomplete while reflecting adversely on his professional competence does not raise such statements to the level of perjury.

What I am trying to say to you in response to the question that you are going from on the first grand jury this time, the second, and the third, is that the focus was here in the early time that you are talking about; and we pushed.

Second, you go to a second grand jury when he gets into the Pittsburgh matters in depth. That is Mr. Kirshen.

Third, you get to the third grand jury which is in the period of late 1974 to 1975, where I am involved—involved in the sense that I have got the case and am handling it—and there I made decisions, and I brought the witnesses according to my relationship with Mr. Nard as I analyzed transcripts and as I analyzed his input to the very best of my knowledge and ability to accomplish. And when it was done, it was not there.

Senator HATCH. I will just say this: Mr. Caramanos testified favorably for Nard. Zaremba has offered affidavits favorable to Nard, and he said that he got basically short shrift in 1972. You asked very few questions; that is why he was back in 1973 and as I recall was not even called on in 1973.

Let me just turn to this: During this same period of time Nard was prosecuted for income tax—excuse me, Senator Grassley.

Senator GRASSLEY. It says here in hearing exhibit 15, "However, Zaremba did not feel that there was any effort to sabotage Nard." That is what it says right here.

Senator HATCH. That is in the contract, Senator. He is referring to the contract itself—for the construction of the job.

Mr. HULTMAN. No.

Senator HATCH. He is not referring to the grand jury proceeding. We brought that out earlier. That is what he meant by that.

He has given an affidavit that is much more specific than that, Senator Grassley, and we will get that into the record.

Senator GRASSLEY. The last paragraph here says, "Zaremba left Armour in 1970. He has not had any contact with them since then, and no one made any effort to influence his grand jury testimony."

Senator HATCH. I have no problem with that.

Mr. **Reavely**. Senator, before we proceed I would like to clear the record up. I noticed some confusion on your staffer's part when Mr. Hultman referred to exhibit 7 and read the court's proceeding. That is really the staff report exhibit No. 7, and it is not a hearing exhibit.

Senator **Hatch**. I see.

Mr. **Reavely**. I think it is important to have this in the record.

Senator **Hatch**. All right.

Mr. **Reavely**. We are going to submit 12 exhibits, so we will make this Hultman exhibit No. 13—*Armour & Company* v. *John A. Nard* court decision from the U.S. district court, northern district of Iowa.

Senator **Hatch**. That will be fine.[1]

During this same period of time Nard was prosecuted for income tax evasion by the U.S. attorney's office in Pittsburgh. Maybe we could go to hearing exhibit No. 22.

[Exhibit No. 22 follows:]

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[1] Not available at press time

HEARING EXHIBIT #2

IN THE UNITED STATES COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
v. — No. 73-188 Criminal
JOHN A. NARD

BILL OF PARTICULARS

And now comes the United States of America, by Richard L. Thornburgh, United States Attorney for the Western District of Pennsylvania, and Thomas A. Daley, Assistant U. S. Attorney for said district, and files the following bill of particulars in response to the motion of defendant.

1. The method of proof that will be employed by the Government at trial will be the "specific items" method.

2. The sources of the unreported income of defendant for the year 1968 are:

a) income realized by the defendant in the form of a residence which he caused to be constructed for himself, while engaged as a partner of the Three Rivers Co. which was the general contractor in the construction of a meat processing plant for Armour and Co.; the expenses pertaining to the construction of the taxpayer's residence were integrated with the expenses relating to the construction of the meat processing plant and were paid by Armour and Co.

b) income in the form of salaries received from the Three Rivers Co.

RICHARD L. THORNBURGH
United States Attorney

Thomas A. Daley
By: THOMAS A. DALEY
Assistant U. S. Attorney

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and correct copy of the within pleading was served upon David B. Buerger, Esquire and Felix A. Cohen, Esquire, 1800 Oliver Building, Pittsburgh, Pennsylvania 15222, by mail on September 6, 1973.

Thomas A. Daley
THOMAS A. DALEY
Assistant U. S. Attorney

Senator HATCH. This is the bill of particulars on which the Government's prosecution was based.

Did you know that Nard's income tax prosecution was based on the alleged diversion of Armour funds by Nard to construct a personal residence in Pittsburgh? You were aware of that?

Mr. HULTMAN. Yes.

Senator HATCH. It has been Nard's contention for more than 10 years that Armour counsel fabricated the diversion of funds evidence to use against him at trial and to give to the Internal Revenue Service for harassment purposes.

Did you investigate Nard's allegations that Armour counsel had manufactured this diversion of funds theory to use against Nard?

Mr. HULTMAN. The allegations that were made there and the testimony are a part of the total investigation itself. As it has to do specifically with an income tax case, no.

Senator HATCH. OK.

Mr. HULTMAN. I have not investigated in any way—and I would want you to know that very clearly—the Nard income tax matters as such.

Senator HATCH. Other than as a general part of his case?

Mr. HULTMAN. Yes.

Senator HATCH. Did you ever come to the conclusion in your investigation as to whether or not Nard's allegation that Armour counsel had fabricated this evidence had any merit?

Mr. HULTMAN. We pursued all of the evidence that was presented and that we could dig out. No; I do not recall.

Senator HATCH. Do you recall what your feeling was about it?

Mr. HULTMAN. No; I do not recall what it was as we are here today.

Senator HATCH. I might mention, if Armour counsel had fabricated the diversion-of-funds theory, it would have been false evidence, upon which Judge Weis in Pittsburgh would have mistakenly relied in awarding Armour $205,000 of Nard's money. It would have been the same false evidence which the Internal Revenue Service and the U.S. attorney's office in Pittsburgh relied on to prosecute Nard for income tax evasion.

Mr. HULTMAN. Again, sir, I do not know anything about the income tax. I have tried to make that very clear.

Senator HATCH. But would that not have been a critical element in your investigation of Armour to prove or disprove?

Mr. HULTMAN. I did not have an investigation——

Senator HATCH. Or in Kirshen's investigation of Armour.

Mr. HULTMAN. No; I did not have an investigation to investigate the conviction and prosecution of Nard in an income tax case.

Senator HATCH. But you are talking about perjury. Either he perjured himself or they did. To a great extent, does not Nard's credibility stand on whether or not he actually diverted funds for his own use—diverted Armour funds for his own use? In other words, if this was fabricated evidence, it meant his income tax prosecution was unfounded. Would that not be correct?

Mr. HULTMAN. Again, those are conclusions that you can come to; and if the proof is there to establish it, then the answer would be "yes". But as I recall—and, again, I do not remember what document or where—there was testimony by an accountant or somebody who fit in that category who came up with three theories, and those three theories were projected, and one of those three theories was then used. That is as much as I can recall here today about anything that has to do with the area that you are now talking about.

Senator HATCH. Have you ever told anyone that Nard was a convicted felon and that he was convicted for income tax evasion?

Mr. HULTMAN. I am sure I have if anybody asked me the question at some time or place. That is a matter of public record.

Senator HATCH. OK. Let us turn to hearing exhibit No. 23.

[Exhibit No. 23 follows:]

HEARING EXHIBIT #23

WADSWORTH, ELDERKIN, PIRNIE & VON LACKUM
ATTORNEYS AND COUNSELORS AT LAW
810 HIGLEY BUILDING
CEDAR RAPIDS, IOWA

EDWIN H. WADSWORTH
DAVID M. ELDERKIN
THOMAS M. PIRNIE
JOHN R. VON LACKUM
DAVID A. ELDERKIN
H. MARC JOSEPH

TELEPHONE
362-2137 -
AREA CODE 319
MAILING ADDRESS
P. O. BOX 1968
52406

October 13, 1976

Mr. John A. Nard
Woodcock Road
Bewickley, PA 15143

Dear Jack:

Evan Hultman telephoned me in the late afternoon of September 1, 1976, regarding a letter I sent him on August 11th. I did not record the conversation, and the following is the gist of our conversation as I recall it, having only the benefit of memory and a few notes.

Hultman, after apologizing for not having contacted me sooner, asked if I had gotten my attorney fees from you in advance. He indicated that a few years ago court reporter Burt Boudreau had a terrible time with you over a bill. He then asked whether I knew that you were a convicted felon. When I said no, he stated that the conviction was for income tax fraud.

Hultman then stated that he first met you in 1970 or 1971 when you complained about engineer William H. Bossenburger's testimony at your Sioux City trial. He stressed that this was the only matter you complained about initially. After an investigation, he concluded that the testimony was probably fraudulent but, because Bossenburger was an expert witness expressing opinion testimony, he did not feel that a perjury indictment was justified. Hultman stated, however, that he felt that something should be done so he (Hultman took full credit for this) caused the Iowa State Board of Engineering Examiners to reprimand Bossenburger. This latter action, he related, was not easy because all professional groups are loathe to discipline one of their own.

After the matter of the engineer's testimony had taken place, Hultman stated that you approached him for the first time about other aspects of your Sioux City trial, as well as matters which occurred in your later trial in Pennsylvania. Although you urged him to review the Pennsylvania matters with the Iowa matters, he told you that he had no jurisdiction over anything happening in states other than Iowa. He stated that he would consider happenings in Pennsylvania only as they pertain to possible crimes committed in Iowa. Hultman then referred your case to assistant Robert Sikma for possible review by the Grand Jury.

At this point, Hultman's rendition of the events seemed to get more vague. He stated first that there appeared to be substance to some of your claims -- a statement he was virtually obligated to make in light of his later remark that his office spent more time on the investigation of your allegations than they had on any other case since he had been District Attorney. He related that the fact Armour and Co. might be involved merely encouraged him.

However, as the investigation went on, you attempted to bring in more and more people -- virtually everyone connected with the Sioux City trial. Then you began talking about dishonest Pennsylvania judges and politicians. When Sikma wouldn't accommodate you about all these people, you went to Hultman and demanded that he be replaced. Because of the possible importance of the case, Hultman decided to assign the matter to another assistant, Alan Kirchen. After a while, though, you made the same remarks about Kirchen you made about Sikma, and Hultman personally took over.

Hultman stated that although two Grand Juries heard testimony regarding your allegations, no vote was ever taken -- the case was simply washed out. At this point, I asked Hultman what caused him to wash out a case, although possibly not meritorious in total, according to his own statement seemed meritorious in part. Did he eventually change his mind about your charges? He replied that, of course, he could not tell me what the Grand Jury reviewed or heard but the matter eventually boiled down to a matter of credibility. In so many words, Hultman appeared to me to be saying that, although there was some merit to some of the matters you allege, no one was going to believe you. As I recall, he at least alluded to your income tax problems being one of the credibility factors. He also stated at one point that any criminal proceeding would merely appear to be a crook hassling with other crooks. Thinking fast, he quickly remarked that the last statement was not for public consumption. I have little doubt that he would deny it now.

Hultman then went on to relate all the purported problems he had with you -- misleading information, wild statements, etc. Needless to say, these were more conclusory than factual. He stated that you had hired fine lawyers to represent you in Sioux City and, if anything had really gone wrong there, didn't I think they would have done something about it. He told me that he believed I was about the fifth or sixth lawyer examining the case for you after the fact and asked me what I thought had happened to them.

I simply do not have enough of a background relative to your Iowa and Pennsylvania affairs to adequately evaluate the above conversation -- I merely report it to you. As is obvious, I did not attempt to question Hultman in any detail, the purpose of my contact with him being merely to obtain his version of what transpired regarding the Iowa Grand Juries. At your express request, I am sending a Xerox copy of this letter to Clark Mollenhoff in Washington, D.C. by special delivery mail so that the two of you can review it this Saturday.

Very truly yours,

DAVID A. ELDERKIN

DAE:rac

cc: Mr. Clark Mollenhoff

Senator **Hatch**. This is a letter from an attorney in Cedar Rapids, Iowa, to Mr. Nard, dated October 13, 1976. It is his summary of a telephone conversation he had with you on September 1, 1976.

I would refer you to the second paragraph on the first page:

> Hultman, after apologizing for not having contacted me sooner, asked if I had gotten my attorney's fees from you in advance. He indicated that a few years ago court reporter Burt Boudreau had a terrible time with you over a bill. He then asked whether I knew that you were a convicted felon. When I said no, he stated that the conviction was for income tax fraud.

Mr. Nard testified before the grand jury in 1975 that Armour had fabricated the diversion-of-funds theory and used it both at trial and to frame him with the IRS.

If you believe he was a convicted felon and that that conviction was proper, why then did you allow him to testify to the contrary before the grand jury without prosecuting him for perjury?

Mr. **Hultman**. I do not follow what your question is, Senator. Could you give it to me again?

Senator **Hatch**. If you had told this attorney——

Mr. **Hultman**. If what?

Senator **Hatch**. If you had told this attorney, as he says you have——

Mr. **Hultman**. This is in 1976.

Senator **Hatch**. Right.

Mr. **Hultman**. This is a call, at least as I view it and read it here, where Jack Nard hires a lawyer to call me to ask me in great detail about the grand jury investigation. This is kind of typical of events like writing judges before the case and writing judges after the case, and so forth and so on.

With that in mind then, give me your question, because I think you ought to understand as I view this letter. I mean I am not the source of it. It is Jack Nard hiring a a lawyer to call me. It is like tape recording conversations—which is a new one for me—without telling the party that you are having a conversation with, and so forth. I do not think those are exactly honorable ways to deal eyeball to eyeball. Now go ahead and ask me the question.

Senator **Hatch**. Mr. Nard testified before the grand jury in 1975 that Armour had fabricated the diversion-of-funds theory and used it both at trial and to frame him with the IRS. If you believed he was a convicted felon——

Mr. **Hultman**. But he was in fact a convicted felon.

Senator **Hatch** [continuing]. And that conviction was proper—if you believed that, why did you allow him to testify to the contrary before the grand jury without prosecuting him for perjury?

Mr. **Hultman**. Well, that does not even—Senator, I cannot respond to a question of that kind.

One, he is a convicted felon. You are innocent until proven guilty, we all know; and if you are a convicted felon, you are a convicted felon until proven something else. So this is a statement of fact and a matter of record.

Now, you then take a big leap here and you say that I had decided he was not a convicted felon—at least that is the import—and thus I should not have brought him before the grand jury or I should not make this kind of a statement. I do not see how the two follow in any way. This is a statement of fact; it is a true fact in response to the questions that this lawyer asked me.

I very carefully likewise—and I want to make this very clear, Senator—said to Jack Nard from the day we went forward that it was very important for me to know if he had any problems in terms of his background, or as things went along, you know, that were criminal in nature; and that was very important.

I also explained to him, because of this procedure he had all the time of dealing with you rather than through the lawyer—and I am sure you are aware of this in many, many, many instances—that at a given time anything that he was telling us could in turn be used against him, because I again would make very certain that I would never take advantage of the long arm of the law under those kind of circumstances.

He was aware of that, and we talked about it on numerous occasions. So I do not understand in 1975 what you are getting at. I am just not following. He is a convicted felon.

Senator HATCH. What I am getting at is this: If he was convicted on a diversion of funds theory and he lied to you by saying he did not divert, then why did not you nail him for perjury? If he was a convicted felon and he was wrong, then the story he was telling you had to be perjurious. Somebody had to commit perjury—either Armour or Nard—and I think the documents show it was not Nard.

Mr. HULTMAN. I do not come to that conclusion. Different people come to different conclusions, the same as juries sometimes vote 7 to 5 or 11 to 1. That does not then, ipso facto, follow that somebody, if he has committed perjury, is on one side of that vote or the other.

Senator HATCH. All right.

In the last paragraph of the second page of Mr. Elderton's letter of October 13, 1976, exhibit No. 23, he goes on to say:

> Hultman stated that although two grand juries heard testimony regarding your allegations.—

This is his letter to Nard—

> no vote was ever taken. The case was simply washed out. At this point I asked Hultman what caused him to wash out a case although possibly not meritorious in total according to his own statements seemed meretricious in part. Did he eventually change his mind about your charges? He replied that of course he could not tell me what the grand jury reviewed or heard but the matter eventually boiled down to a matter of credibility. In so many words Hultman appeared to me to be saying that, although there was some merit to some of the matters you alleged, no one was going to believe you. If I recall, he at least alluded to your income tax problems being one of the credibility factors. He also stated at one point that any criminal proceeding would merely appear to be a crook hassling with other crooks. Thinking fast, he quickly remarked that the last statement was not for public consumption. I have little doubt that he would deny it now.

If you believed Nard's credibility was damaged because of his income tax problems, again was it not incumbent upon your office to determine if Nard's income tax prosecution was based on Armour's false and perjured evidence as Nard alleged?

Mr. HULTMAN. No, I do not think it is my responsibility at that particular time to get into matters that have to do with credibility, with how evidence is interpreted. This would have been again an illustration of me taking on a function that went beyond what my responsibilities as I viewed them at the time were, because I do not come to the same conclusion that you do, and others honestly and fairly likewise did not.

The Internal Revenue did not. The witness who gave the three theories that were involved here came to different conclusions. Jim Reynolds, my successor, and others have come to different conclusions. That does not mean that somebody acted improperly in the process.

Senator HATCH. 1975 was the last grand jury which heard matters involving Jack Nard's allegations. Grand jury sessions were held in February, April, and August.

I would like to introduce several documents and then ask you questions about them.

Mr. HULTMAN. All right.

Senator HATCH. Let us look first at hearing exhibit No. 24.

[Exhibit No. 24 follows:]

HEARING EXHIBIT #24

[illegible]RAND [illegible]RY A[illegible]IG[illegible]TS - ORDER [illegible]

	PARTIES	WITNESSES FOR U.S.	REMARKS	1-30 DATA
38	UNITED STATES OF AMERICA v. ✓ 18 USC 922(a)(6) False statements to Acquire Firearms	Howard L.	True Bill No Bill	18 0
	UNITED STATES OF AMERICA v. ✓ BOSSENBERGER, William H. (NARD) 18 USC 1621 Perjury	TR[illegible], [illegible] L. HORTON, L[illegible] W. HARD, John A. DUENSING, David L.	True Bill No Bill	
	[illegible]TED STATES OF AMERICA v. ✓ ✓ 18 USC 656 Embezzlement 18 USC 1341 Mail Fraud (Additional Indictment)	, [illegible] FBI	True Bill No Bill	18 0
	UNITED STATES OF AMERICA v. , Art , Ed , Floyd , Robert		True Bill No Bill	21 0

Grand Jury Assignments for [illegible] RAPIDS APRIL [illegible], 19

et	PARTIES	WITNESSES FOR U.S.	REMARKS-DATA
1048	UNITED STATES	, IRS	TRUE BILL 19
	vs.		NO BILL 0
	26 USC 7201		
	Evasion of Income Tax		
	UNITED STATES	, IRS	TRUE BILL 19
1049	vs.		NO BILL 0
	26 USC 7201		
	Evasion of Income Tax		
577	UNITED STATES	KELLER, George	TRUE BILL
ONT.)	vs.		NO BILL
	✓ BOSSENBERGER, William H.		
	✓ (Nard)		
	18 USC 1621 Perjury		

Grand Jury Assignments for CEDAR RAPIDS, IOWA, AUGUST 19, 19 75

orke. No.	PARTIES	WITNESSES FOR U.S.	REMARKS-DATA
036 NT'D)	UNITED STATES vs. JOHN LEE P. ; STEPHEN ; JERRY WAYNE 18 USC 1955 Conduct Illegal Gambling	SA FBI SA , FBI SA FBI SA FBI ROBERT DU WAYNE and LAWRENCE	TRUE BILL 17 NO BILL FRANK S.
77 T'D)	UNITED STATES vs. BOSSENBERGER, William H. [redacted] 18 USC 1621 - Perjury	Jack Nard	TRUE BILL NO BILL
71	UNITED STATES vs. 18 U.S.C. 2 & 1708, 495 and 371 Theft of Mail, Forgery, and Conspiracy	SA Sec.Serv	TRUE BILL NO BILL

Senator HATCH. These are grand jury assignment sheets for the three sessions held in 1975, and I would like to draw your attention to the first witness listed on the February session, Norman Trompeter, who was the Armour accountant on the Pittsburgh job.

Now let us look at hearing exhibit No. 25.

[Exhibit No. 25 follows:]

HEARING EXHIBIT #25

NORMAN TROMPETER was interviewed on August 13, 1979 at Greyhound Tower, Phoenix, Arizona by Michael F. Murphy and David H. Noznesky.

Trompeter said that he recalled his appearance before the Grand Jury because it was the only Grand Jury with which he was ever associated. He was not influenced concerning his testimony by either Jackson or Hultman. However, when asked if anyone in the company influenced his testimony, he replied, "not that I recall". Trompeter stated that he did not have any contact with Hultman prior to his testifying. He recalled that the session was held in a courtroom. He was sworn in and questions began immediately. The jury was very attentive and asked good questions. Trompeter felt that Hultman wanted the jurors to ask questions. It was not clear to Trompeter why he was in Iowa since his only dealings with Nard were in Pittsburgh. He was aware of some hearsay that perjury was involved in the Iowa trial.

Trompeter said that, "I didn't trust Nard from the minute I saw him". He described him as a big talker who stated that he didn't need accountants or engineers on the job. He felt that Nard was not a good contracter and that the freezer storage facility that he had built was merely a sales device and a con job. But Trompeter was not aware that anyone in the company was out to get Nard. He explained that there was no advantage in getting rid of him as they wanted the plant finished. He had no contact with the Internal Revenue Service in Pittsburgh about Nard, but he had heard they were involved.

Also present during this interview were Peter Novak, Greyhound attorney, and Sandra Moore, a legal secretary, who took notes for Greyhound. Trompeter denied that anyone at Greyhound had exerted any influence upon his statements of this date. He also said that he was unaware of any involvement by Greyhound in illegal campaign contributions and expecially unaware of any involvement by Nard in providing information to the Watergate Special Prosecutor's Office concerning contributions.

The attached notes were prepared by Trompeter after his appearance before the Grand Jury. They were voluntarily supplied.

Senator **Hatch**. These are the Secret Service notes of their interview with Norman Trompeter on August 13, 1979. Mr. Trompeter gave to the Secret Service at that time his notes of his 1975 grand jury testimony.

I would ask you to turn to the last question on page 5 of Mr. Trompeter's notes. It says, "The attached notes were prepared by Trompeter after his appearance before the grand jury. They were voluntarily supplied."

On the last line there the question is, "When was it you actually knew about a house?"

> After termination. One time Zaremba, Gass, and myself drove up to see the house, and that is when I knew.
>
> Was Nard living in the house then?
>
> I don't know.
>
> How did you know there was diversion?
>
> The biggest diversion we had was on McCully Smith invoices, Nard's brother-in-law; and those were invoice items we knew were not on the meat plant.

The reason I bring that out is that Trompeter testified in the 1975 grand jury, which you conducted, that Nard had diverted Armour funds to his house by commingling subcontractor invoices and that Armour did not know about Nard's house until after Armour paid for it. Do you agree with that? Do you agree that that is what he testified to?

Mr. **Hultman**. I agree that this was the testimony. It is a record of it, or a small part of it—yes.

Senator **Hatch**. That is all I am asking.

Nard has told committee staff that he testified before the same grand jury in 1975 that Armour did know about Nard's house before termination and they knowingly paid the subcontractors for the house to set Nard up.

Faced with these two directly contradictory testimonies of Trompeter and Nard, was it impossible for your office to prove which version was correct, or did your office not attempt to prove which version was correct? Either Nard or Trompeter had to be lying.

Mr. **Hultman**. Again, Senator, this goes to the fact that you have conflicting testimony. This does not then indicate, bottom line, that you have got perjury. This same testimony was the kind of conflicting testimony—in fact, I think probably as I recall to the best of my knowledge, reading records and transcripts of the trials and the appeals, it was nothing new. This is the same testimony that had been there from day one through all of the various proceedings, to the best of my knowledge. So it is a question of believability.

Senator **Hatch**. Do you just leave something like that stand? This was not an insignificant thing. This was testimony that made him a "convicted felon" and he said was false testimony.

Mr. **Hultman**. Again, but others said that is not the case, and the testimony is a matter of deciding credibility, whom you are going to believe, and all the other factors that go into it.

Senator **Hatch**. You chose Trompeter over Nard then.

Mr. **Hultman**. I did not choose anybody, sir.

Senator **Hatch**. You decided it was a question of who.

Let me ask you this——

Mr. **Hultman**. I did not choose any side. I was doing my best in order to present the testimony.

Senator **Hatch**. Perhaps the most troubling aspect of our review of the Department's investigation of Nard's allegations was the failure of the Department to utilize the information Nard provided to substantiate his charges.

I am certain that it is difficult to deal with Nard given his abrasive nature. Yet apparently the Department, and in particular you as the U.S. attorney——

Mr. **Hultman**. Where are you reading from now, sir?

Senator **Hatch**. I am just reading the question.

Mr. **Hultman**. Oh.

Senator **Hatch** [continuing]. Succumbed to the weakness of damning the message because of the messenger. In other words, Nard got on your nerves; and let us see what happens.

The information Mr. Nard provided to the Watergate Special Prosecutor's Office which resulted in a successful Government felony prosecution of the Greyhound Corp. speaks for itself.

Mr. **Hultman**. Well now, you were just reading, were you not, from Mr. Reynolds'——

Senator **Hatch**. Oh, no.

Mr. **Hultman**. OK. It sounds exactly the same.

Senator **Hatch**. I am trying to get through this to the question.

Mr. **Hultman**. All right.

Senator **Hatch**. I would like to ask you several questions regarding some internal Armour documents which Nard gave to your office that Nard alleges proved that Norman Trompeter, and therefore Armour counsel, knew of the construction of Nard's residence before contract termination and knowingly paid for it in order to subvert the legal process at trial and frame Nard with the Internal Revenue Service for purposes of harassment and to win their civil suit and, I might add, to stop the grand jury investigation.

These are documents which Nard provided to your office for your investigation of his allegations. Look at exhibit No. 26.

[Exhibit No. 26 follows:]

HEARING EXHIBIT #26

INTER-OFFICE CORRESPONDENCE

ARMOUR

ARMOUR FOODS

TO F. E. Stehlik - 8A DATE 9/[illegible]/68

FROM R. R. Hartel - 22

SUBJECT Pittsburgh Construction Contract

Mr. Cox suggested that I propose a mechanism to you for releasing [illegible] retainage on the Pittsburgh project. Frank, my feelings are simply these:

1. We have had an audit which has brought to light no glaring [illegible] in either Mr. [illegible]'s evaluation of the present job or Three Rivers' financial situation. Based on this audit, it has been proposed that $[illegible] be released to Three Rivers.

2. Three Rivers in the form of Mr. Hard has refused to sign any contract amendments. In general, the amendments proposed involve schedule compliance and non-payment of overtime. The non-payment of overtime consideration is already treated in our present contract. A number of things regarding schedule compliance have yet to be resolved, not the least of which are the smokehouses. Mr. Hard states categorically that he will not re-position his present promised schedule.

Based on the foregoing, I would suggest to you that a letter be written that authorizes the release of the retainage that we have agreed upon and also make it understood that such a release of retainage in no way alters the other provisions of our original contract.

Conversation with Jim Speer discloses his preference for advance progress payments instead of releasing retainage. My personal preference would be to keep our progress payments clean.

Senator HATCH. This is an Armour internal memorandum dated September 23, 1968, 2 months before their contracts with Nard were terminated. I refer your attention to the first two paragraphs of this memorandum.

Mr. HULTMAN. I cannot read my copy, sir, but I will listen as you go along.

Senator HATCH. It says, "Mr. Cox suggested that I propose a mechanism"—this is to Mr. Stehlik from Mr. Hartel—"to use for releasing some of the retainage on the Pittsburgh project. Frank, my feelings are simply these: We have had an audit which has brought to light no glaring inconsistencies in either Mr. Zaremba's evaluation of the present job or Three Rivers' financial situation. Based on this audit it has been proposed that the $350,000 be released to Three Rivers," the partnership of which Nard was a 35-percent holder.

It is obvious that Armour was going to audit Nard's subcontractors thoroughly before disbursing any money owing to them for work done on the Armour job. I think you will agree with that.

Mr. HULTMAN. Sir, with these documents that you are now looking at and that you are asking me to look at and testify to, I will be very frank about it: I do not have any independent recall of any kind without putting the whole thing together.

Senator HATCH. I understand.

Mr. HULTMAN. So I am not going to be able to respond to you.

Senator HATCH. This particular memorandum does show that Armour was satisfied with Nard's finances 2 months prior to contract termination.

Mr. HULTMAN. I cannot respond to you because, again, I do not recall what the other testimony was. This was an item I am sure——

Senator HATCH. But this is Armour's own memorandum—their own interoffice memorandum.

Mr. HULTMAN. I understand, sir, but what I am saying is that this item and these other items from the Armour files that are the rest of this list here in front of me are items that were involved in the civil suits. They had the disputes over them, they made these points, and that is a matter of credibility and related.

Senator HATCH. I understand.

Mr. HULTMAN. If Nard cannot prevail—and now I am just drawing a conclusion of law—with that testimony in a civil case—in civil cases in this instance—where the testimony has got to rise to this level, then I think it is fair to conclude that in a criminal case, where you have got to have evidence beyond a reasonable doubt, the odds are you are not going to get to that point.

Senator HATCH. OK. Mr. Hultman, these are central to the diversion of funds issue. All I am bringing out is that these were documents that you had access to. This one says that they had conducted an audit and there were no difficulties with the audit 2 months prior to contract termination of Three Rivers' finances.

Look at exhibit No. 27.

[Exhibit No. 27 follows:]

HEARING EXHIBIT #27

A R M O U R   F O O D S

o A. Hillman-35 DATE Nov. 25, 1968

FROM A. F. Mitchell-42

SUBJECT Construction Contracts-Pittsburgh

This will confirm our conversation of Nov. 22 in which it was agreed that Dan Zaremba and Len Wargin would work together to negotiate new contracts to replace the contracts that were terminated with the Three Rivers Company.

Mr. Wargin will handle the Purchasing responsibilities and Mr. Zaremba will handle the Engineering responsibilities relating to the contracts.

Messrs. Wargin and Zaremba will be at Pittsburgh on Nov. 25 to:

(1) Meet with each of the present sub-contractors for the purpose of:

- (a) Obtaining assurance that they will continue on the job without work delay. Guarantees will be made to cover work done after 11/25 and reasonable payments covering unpaid bills for work done before 11/25.
- (b) Developing firm and detailed quotations on the cost to complete their portion of the job.
- (c) Obtaining time schedules and manning tables from each sub-contractor.

NOTE: The target date for completion is April 1, 1969. If, after receiving time schedules, it is found that a sub-contractor cannot meet the April 1st date, the subs will be asked to quote costs to cover expediting premiums.

- (d) Obtaining a complete set of drawings to cover the work being done by each of the subs.

(2) Make an audit to review all completed work and obtain information on the following:

(a) Details regarding the sub-contractors' contract with the Three Rivers Co.

(1) Total dollar value of contract
(2) Evaluation of amount of work completed
(3) Amount of money paid.
(4) Amount of money still due

NOTE: To obtain this information, it will be necessary for the sub-contractors to open up their records and make copies of checks, invoices, etc., available to the Armour representatives.

(3) Make a survey to determine the status of the materials that are presently on the site to determine which of the materials have already been paid for by Armour.

(4) If necessary, contact other contractors to obtain quotations on any job that the present sub-contractors refuse to complete.

Upon their return to Chicago, Messrs. Zaremba and Wargin will put together all of the quotation figures to provide management with:

(A) Total cost to finish the job.

(B) Premium cost to complete by April 1st

(C) Information regarding money due to sub-contractors for work performed before Nov. 25th.

After Foods management approves the amount needed to complete the construction work, construction contracts will be finalized with each of the sub-contractors that will be required to complete the job.

jh
cc: D. Zaremba-35
W. E. Both-42
L. V. Wargin-42
R. R. Hartel-22

Senator HATCH. This is an Armour document dated November 25, 1968, 1 day after contract termination.

I draw your attention to the first three paragraphs on the tops of pages 1 and 2. This is an Armour Foods memorandum:

> Subject: Construction Contracts at Pittsburgh. This will confirm our conversation of November 22, in which it was agreed that Dan Zaremba and Len Worgen would work together to negotiate new contracts to replace the contracts that were terminated with the Three Rivers Company.

At the top of the second page:

> Make an audit to review all completed work and obtain information on the following: Details regarding the subcontractor's contract with the Three Rivers Company: (1) total dollar value of the contract; (2) evaluation of amount of work completed; (3) amount of money paid; (4) amount of money still due. Note: To obtain this information it will be necessary for the subcontractors to open up their records and make copies of checks, invoices, et cetera, available to Armour representatives.

It was obvious that Armour was going to audit Nard's subcontractors thoroughly. They had already audited Nard—acknowledged it—2 months before they canceled. They were going to audit his subcontractors thoroughly before disbursing any money owing to them for work done on the Armour job.

Look at exhibit No. 28.

[Exhibit No. 28 follows:]

HEARING EXHIBIT #28

ARMOUR FOODS

TO SEE BELOW DATE December 2, 1968

FROM J. H. KELLY - CHICAGO #21

SUBJECT Pittsburgh Plant Construction

TO: N. TROMPETER - Armour and Company,
P.O. Box 4543, Pittsburgh, Pa. 15205
D. E. ZAREMBA - 35
L. V. WARGIN - 42

As previously instructed, you will act as a committee concerning all future commitments and payments to complete the construction of the Pittsburgh facilities.

Mr. Trompeter will be representing both the Food Controller's Division and the General Auditor's Office. He will attempt to obtain a breakdown from each sub-contractor of the payments made to date on the job through Three Rivers Construction Company. This breakdown should be in the form of paid invoices showing a detail of all charges made by the sub-contractor against the Armour project or against any job for Nard and/or Three Rivers even though they may have received payment from separate funds. [This specific request should be made since some contractors would not voluntarily furnish information on payments by Nard or Three Rivers apparently from funds other than Armour's covering expenditures not related to our construction.]

You should also obtain detailed copies of unpaid bills from each sub-contractor for work performed to date covering time and materials furnished. This breakdown should be for the Armour job and all others. No approval of disbursement should be made to sub-contractors until this information has been obtained and audited. No payment for prior work should be made without the approval of the Law Department.

If it becomes necessary to make payments without the above information being available in order not to stop work at the construction site, contact Chicago for approval.

Since this is now an Armour project supervised by Armour, existing procedures for General Contract jobs will apply. Disbursements must bear the approval of F. Messenger, Site Engineer; W. McKavis, Project Engineer; D. Zaremba, Project Manager; N. Trompeter, Project Accountant; and L. Wargin, Project Purchasing Agent. In addition to the above approvals, Legal Department approval should be obtained before making payments to any sub-contractor.

cc: R. R. Hartel - 22
A. Millman - 35
G. B. Michelson - 5
L. W. Horton - 21
R. W. Cass - 48
A. F. Mitchell - 42
P. J. Hanley - Pittsburgh, Pa.

Senator **Hatch**. This is also an internal Armour document dated 1 week later—December 2, 1968. I draw your attention to the second paragraph:

> Mr. Trompeter will be representing both the Food Controllers Division and the General Auditor's Office. He will attempt to obtain a breakdown from each subcontractor of the payments made to date on the job to Three Rivers Construction Co. This breakdown should be in the form of paid invoices showing the detail of all charges made by the subcontractor against the Armour project or against any job for Nard and/or Three Rivers even though they may have received payment from separate funds. This specific request should be made since some contractors would not volunteer information on payments by Nard or Three Rivers apparently from funds other than Armour's covering expenditures not related to our construction.

This is further Armour direction. This ties specifically to Norman Trompeter to conduct a most exacting audit of Nard's subcontractors. Armour is directing Trompeter to audit all subcontractor invoices to Nard, not just invoices on the Armour meat plant.

Look at exhibit No. 29.

[Exhibit No. 29 follows:]

INTER-OFFICE CORRESPONDENCE

ARMOUR

ARMOUR FOODS

HEARING EXHIBIT #29

TO Listed Below DATE Dec. 10, 1968

FROM A. F. Mitchell-42

SUBJECT Summary - Pittsburgh Project Meeting 12/6/68

TO: R. R. Hartel-22
A. Millman-35
D. Zaremba-35
L. V. Wargin

Audit

Norm Trompeter will compile the audit information to determine each vendor's status as of contract termination date of 11/24. This data is to outline vendor's estimate of work done, materials delivered to the job site, total amount paid to date, and amount still due. The figures should also indicate our estimate of the work done and the materials on hand.

Controls on work now being done

Mr. Art Millman has designed a form that will provide the necessary control on work being done during this interim period. This same form will be used for scheduling and control after contracts have been finalized.

Contract Negotiations

The contract negotiating team will attempt to negotiate contracts at fixed price levels. Before finalizing contracts at fixed costs, the contract figure must be approved as a reasonable figure by comparing the total to an engineering estimate. Mr. Millman feels that his department will be able to prepare engineering estimates within three weeks.

In order to provide the negotiators with a degree of flexibility, we all agreed that contracts could be let on a "Time and Material" basis with a Fixed Maximum Amount. The engineering estimates are to be used to verify the fixed maximum and the control forms are to be used to check "Time and Material" charges.

The 10% retainage can, if necessary, be waived on payments due for work performed prior to the termination date.

Commitment to Management

When all contract proposals are received, Messrs. Zaremba and Wargin are to prepare a listing of the amount of money needed to complete the job and an estimated date of completion.

A.F.M.

jh

Senator HATCH. This is another Armour internal document, again 1 week later, dated December 10, 1968. I draw your attention to the first paragraph. Of course you may want to read all of them, but I think the first paragraph is the pertinent one here.

"Norm Trompeter will compile the audit information to determine each vendor's status as of contract termination date of 11/24. This data is to outline vendor's estimate of work done, materials delivered to the job site, total amount paid to date, and amounts still due." Armour states that Norman Trompeter will perform an audit of all subcontractors.

I think we can now introduce a deposition given by Norman Trompeter in the pretrial proceedings in Pittsburgh. That is hearing exhibit No. 30.

[Exhibit No. 30 follows:]

HEARING EXHIBIT #30

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

- - -

ARMOUR AND COMPANY, a corporation,

Plaintiff,

-vs-

R. STEWART SCOTT, WALTER A. SCOTT, JR.,
PORTER H. SCOTT, and JOHN A NARD, individuals,
t/a THREE RIVERS COMPANY, a partnership,
THREE RIVERS COMPANY, a partnership, and
KATHLEEN O. NARD, an individual,

Defendants.

CIVIL ACTION
No. 68-1372

- - -

DEPOSITION OF NORMAN TROMPETER
WEDNESDAY, SEPTEMBER 22, 1971

Oral deposition of NORMAN TROMPETER, a witness in the above-entitled cause, called by the Defendants for examination, pursuant to notice and pursuant to the Federal Rules of Civil Procedure, pertaining to the taking of depositions for the purpose of discovery, taken by and before Michael D. Powers, a Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of Buchanan, Ingersoll, Rodewald, Kyle & Buerger, 1800 Oliver Building, Pittsburgh, Pennsylvania, 15222, the day and date above set forth, commencing at 12:30 o'clock p.m.

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MR. JACKSON: They are the first five pages, Mr. Buerger, rather than six.

MR. BUERGER: Very well.

Now, I show you a document which I have asked be marked Trompeter Exhibit 2, and ask you to look at that and tell us if you know what it is?

(Thereupon, Trompeter Deposition Exhibit No. 2 was marked for identification purposes.)

(The witness is looking at the exhibit.)

Q My question, Mr. Trompeter, was whether you know what the document is?

A This document was prepared at the request of Mr. Nard of some of the items that I felt did not belong on the Armour job as a result of his bringing me over here to see Cliff Collins. This was sometime in November, prior to termination, in which I reviewed the McCully-Smith invoices.

Q This document, then, is in your handwriting?

A Right. As near as I can tell, it's in my handwriting.

[illegible]
Sec. #2

	Invoice Date 12/31/68	9/30/68	5/31/68	7/21/68	6,
McCully Smith. No Invoice on Record		94435.78			
E. J. Bazzio. Carp Labor.	1172.53		2638.61	100.36	
Bennett Lumber & Mfg Co (Finish lumber.)	5835.70		2219.94	225	
Ralph L. Buck Painting & Decorating			2200.00		
Ft. Pitt. Hardware. Finish Hardware.			667.00		
Kitchen Sales, Inc			2766.70		
Chester Le Maistre, Inc Contract			10008.00		
Chester D. May - misc. Storm Doors, mirrors, marble sink tops, tile, etc			6509.86		
Penn Kress Flagstone Co. 2411 sq. ft. 1½" Rect. Flagstone			1533.40		
Sekel Bros. 9 Loads of Wall Stone			804.78		
Aqua Pools			2120	93[illegible]	
Germain Sand & Lumber				178[illegible]	
W. F. Hinchey Inc. Lathing & Plastering Labor & Matl.				11[illegible]	
Pgh Bldrs & Supply Plaster-molding-Line Casing Sand, Plaster, Dell				[illegible].93	

Senator HATCH. I draw your attention to the first page, which is stamped at the bottom, "Received June 20, 1973, U.S. Attorney, Northern District of Iowa."

Mr. Trompeter states in this transcript that he believes some of the invoices of McCully Smith, one of Nard's subcontractors on the Armour plant, was for work not done on the Armour job.

Let me ask you this with regard to this deposition of Norman Trompeter of Wednesday, September 22, 1971: Do you recall having this document as part of your investigation?

Mr. HULTMAN. I am sure. Again, would you repeat?

Senator HATCH. This is exhibit No. 30. Do you remember this document?

Mr. HULTMAN. Yes; what is the question?

Senator HATCH. Do you recall having this document?

Mr. HULTMAN. No, I do not remember ever seeing it at all, but it is obvious that the stamp indicates this came into the U.S. attorney's office in Sioux City because it is stamped. I cannot read the date. Could you tell me the date?

Senator HATCH. Let me see if I can read it. June 20, 1973.

Mr. HULTMAN. 1973? Well, again we are in the period——

Senator HATCH. That is Kirshen's part.

Mr. HULTMAN [continuing]. Of Mr. Kirshen's grand jury—yes.

Senator HATCH. OK. On page 62 of that transcript there was the following exchange: Mr. Buerger, who was Mr. Nard's attorney at the time: "Very well"—this is Trompeter being examined by Mr. Buerger—"Very well."

> Now I show you a document which I have asked be marked "Trompeter Exhibit 2" and ask you to look at that and tell us if you know what it is.
>
> [Thereupon, the Trompeter Deposition Exhibit No. 2 was marked for identification purposes.]

And it says the witness looked at the exhibit.

Then Mr. Buerger again: "My question, Mr. Trompeter, was whether you knew or you know what the document is.

> Answer: This document was prepared at the request of Mr. Nard of some of the items that I felt did not belong on the Armour job as a result of his bringing me over here to see Cliff Collins. This was sometime in November prior to termination, in which I reviewed the McCully Smith invoices.

In other words, Mr. Trompeter states here that he believes some of the invoices of McCully Smith, one of Nard's subcontractors on the Armour plant, were for work not done on the Armour job. I think you would have to agree with that.

Mr. HULTMAN. Hmm.

Senator HATCH. OK. Mr. Trompeter also states that this document—deposition exhibit No. 2—was prepared in November 1968, again prior to the termination of Nard's contracts with Armour. I think you would have to agree with that—right?

Mr. HULTMAN. I do not know that.

Senator HATCH. OK. I would like to refer you to the Trompeter deposition exhibit No. 2 at the end of Mr. Trompeter's deposition. I believe that it is marked for you. It is the handwritten thing.

Reading down the list of suppliers to McCully Smith noted here by Mr. Trompeter, I think it is readily understandable to explain Mr. Trompeter's reluctance to include these invoices as part of the Armour job.

For example, on this list there is, "Finish hardware; mirrors; marble sink; swimming pool; kitchen sales," and others. I do not think any of us believe that these sound like items that would go into the construction of a meat processing plant but instead items that would go into a personal residence.

It would seem to me then that Mr. Trompeter had some indication that Mr. Nard was building a house somewhere using the same subcontractors and that Mr. Trompeter knew it—and the key point is—knew it before the contract termination date. I think you would have to agree with that, would you not?

Mr. **Hultman**. This is one of those items of evidence that is marshaled as you have marshaled here. I do not have any argument with that.

Senator **Hatch**. OK.

Mr. **Hultman**. But when you put it all together then juries, courts, and lawyers—even Mr. Nard's own lawyer—come to a different conclusion than maybe you or I or somebody else does. I do not think that means then, ipso facto, you can conclude this constitutes perjury.

Senator **Hatch**. Then given Armour's express directions to Trompeter regarding a strict audit after termination but before payment to subcontractors on accounts owing, and given Mr. Trompeter's knowledge of the facts brought out in his own deposition, how is it conceivable that Armour paid almost $70,000 on Nard's house after termination, without knowing?

Mr. **Hultman**. Again, sir, I do not think I am in a position to comment.

Senator **Hatch**. No, but it is fair, is it not?

Mr. **Hultman**. I have no argument with what you have said is just fair, but what I am saying is——

Senator **Hatch**. You are saying Kirshen may have known this but you did not.

Mr. **Hultman**. I have no knowledge, as I have said.

Senator **Hatch**. But you can see why Mr. Nard feels aggrieved, when somebody calls him a convicted felon when they knew that they were paying for his house?

Mr. **Hultman**. I cannot necessarily conclude that as being correct, for the simple reason that we do not have here, and we are not considering here, what the testimony is that says the contrary of what you have just said. We are only dealing with those things——

Senator **Hatch**. We are dealing with people at Armour & Co. who have to admit that they knew before the contract ended that Nard was building a house and then afterwards, after they had audited, paid money into Nard's house, diverted funds to his house.

Mr. **Hultman**. Those are questions of testimony that jurors have got to deal with and, when they put the whole package together, to make a determination.

Senator **Hatch**. This is not just anybody's testimony; this is testimony of Armour leaders, employers, and agents.

Let me go a little bit further. You had all of this Armour internal correspondence made available to you by Nard for your investigation. You also had the Trompeter deposition.

We have seen Mr. Trompeter's own notes from his appearance in your grand jury that he was asked in the grand jury what he knew about the Nard house. His answer was that he did not know about it until after termination. That is in the grand jury. Yet apparently Trompeter was confronted with none of these contradictory documents we have just finished discussing.

I would like to know how you explain this seemingly perfunctory appearance by Trompeter before your grand jury without asking him these crucial questions that would have, I think, made it clear that Nard was not guilty of income tax fraud or evasion.

Mr. HULTMAN. Sir, you are drawing conclusions that those questions were not asked. You are drawing conclusions, and I do not know any evidence to indicate——

Senator HATCH. Do you recall asking them, Mr. Hultman?

Mr. HULTMAN. Pardon?

Senator HATCH. Do you recall asking these questions?

Mr. HULTMAN. No, I do not recall asking any questions concerning—this has been almost 7 years ago, the periods you are now talking about. Until Monday afternoon I had not seen these documents even in that period. What I am saying to you is——

Senator HATCH. You are saying maybe Kirshen did but you did not.

Mr. HULTMAN. Maybe Kirshen did what I did?

Senator HATCH. You said Kirshen was handling it at that time.

Mr. HULTMAN. I still do not follow.

Senator HATCH. You are saying maybe Kirshen knew about this but you did not, because this was the Kirshen——

Mr. HULTMAN. No. Again, I am not saying that at all. What I am saying is, you asked me whether I asked specific questions of somebody who was a witness called back in 1975, and my answer is "No," I do not recall.

My response further is that with all of the evidence, including probably the things that you are dealing with here now—although I am saying probably because that is the best again I can say—if I had them available I certainly did my best with them, and I asked the questions that I felt were pertinent.

Senator HATCH. I think it is pretty clear, if you put them in order, just exactly what did happen.

Let me say this: Trompeter was interviewed——

Mr. HULTMAN. Have you got the number, that I might look at that one too?

Senator HATCH. It is hearing exhibit 25, but let me make one other comment: Trompeter's testimony in the grand jury had been contradicted by these Armour documents, and it seems to me that would mean that Nard's allegation that Armour fabricated the diversion of funds theory was correct. These documents do not lie; they are there. Yet I have heard him called a convicted felon and everything else, by not just you but a number of other people, when you had these documents.

Mr. HULTMAN. I am not going to sit here and draw a judgment, Senator, on the grounds of three or four documents that are placed in front of me concerning a grand jury that happened 6 years ago.

Senator HATCH. If Nard was right and therefore would still be right about the diversion of funds theory used by Armour, then it follows that Judge Weis ruled on the basis of false evidence and Nard was prosecuted by the Internal Revenue Service on false evidence also. That is the significance of Armour's own documents showing that they knew what they were doing.

When Trompeter was interviewed by the Secret Service he said he recalled his appearance before the grand jury because it was the only grand jury with which he has ever been associated; he was not influenced concerning his testimony by anyone.

Mr. HULTMAN. I would like to read from the exhibit if I might, because I have not had a chance to read this whole thing in detail, and I am not apologizing in the process.

In the very first paragraph he says that, "Jerry was very attentive and asked good questions. Trompeter felt that Hultman wanted the jurors to ask questions."

Again, I cannot go back. I do not even remember this individual even being there.

Senator HATCH. I understand.

Mr. HULTMAN. But I did my very best with what I had to run those alleys and those lines to accomplish what we could get.

Senator HATCH. Let me make a point. When he was interviewed by the Secret Service, Trompeter told them that he had prepared detailed notes by Trompeter after his appearance before the grand jury. They were voluntarily supplied, and they indicate that he was never even asked these questions.

Mr. HULTMAN. I did not——

Senator HATCH. There are the notes. They speak for themselves.

Mr. HULTMAN. I do not know whether that is true or not.

Senator HATCH. He knows that it is true.

Mr. HULTMAN. I think that is a misstatement, sir. If I read page 2, it says, "The attached notes were prepared by Trompeter after his appearance before the grand jury."

Senator HATCH. That is right. He has nothing in those notes that would indicate that these very significant questions——

Mr. HULTMAN. You just said to me he had——

Senator HATCH [continuing]. That would show that Armour had suborned perjury and that the witnesses perjured themselves were not even asked.

Mr. HULTMAN. These questions were clearly asked. That is how I interpret what he has just said here.

Senator HATCH. The questions that he talks about, but not the questions that I have been talking about that show that Nard was not guilty of income tax evasion.

Mr. HULTMAN. Let me just say one thing, Senator. It is very, very easy at this time to take a given theory and follow it through, but it is far more difficult for me to sit here and try and go back to events that are 6 or 7 years ago and respond to you in a way that says, "Did you or did you not ask these questions?" Should you have or should you not? is a judgment question.

My answer is to you is—and I cannot give you anything more than this—I do not recall. It is so long ago.

Senator HATCH. And I accept that; but the point I am making, Mr. Hultman, is that these questions I have just asked, based on these Armour documents that I have just shown you, are the most crucial questions of all or among the most crucial—I think there are other crucial questions—because they show that the diversion of funds theory was fabricated by Armour or at least by somebody at Armour, because they knew of his house. They had audited it and still paid money into his house after they canceled the contract. That is the problem.

I accept your statement that you cannot recall. I do not have any difficulty with that. But I also accept Mr. Trumpeter's notes that he was never asked.

Mr. HULTMAN. That he was never asked?

Senator HATCH. Never asked about these particular questions.

Mr. HULTMAN. You are concluding here though—and again I am not trying to argue with you, Senator—that those notes were the only things that were covered; and, two, that there was no discussion with me with him or with some other counsel on the staff concerning the things that you are now talking about.

Senator HATCH. Mr. Hultman, I think if you had asked these questions you would never forget them because——

Mr. HULTMAN. Oh, I do not think so at all—no way. I do not accept that at all.

Senator HATCH. Wait a minute, Mr. Hultman. These questions—you would never forget them because they tend to show that Nard was wrongfully convicted of Federal income tax evasion.

Mr. HULTMAN. I do not have the same opinion as you, sir; and I respectfully accept your opinion; but mine is different. Plus, let me add one note.

Senator HATCH. Sure.

Mr. HULTMAN. Without reference to specific individuals, the credibility and the impact of those witnesses, beyond Nard, is a factor that you consider. You just do not look at a piece of paper; you go beyond that.

Senator HATCH. We have gone through a lot of questions, and you have pretty well agreed that through most of the relevant period you believed Nard.

Mr. HULTMAN. And I have no problem with that, but let me say to you——

Senator HATCH. Then you disbelieve him today because——

Mr. HULTMAN. Let me just conclude. You also had an interview with David Buerger who was representing him—again, the FBI did.

Senator HATCH. Right.

Mr. HULTMAN. Now, he is a very competent, capable lawyer, at least as I understand, by way of reputation.

Senator HATCH. I thought so.

Mr. HULTMAN. And he comes to some conclusions that do not follow the same line as you do. He represented him during this period of time. He did not come to the same conclusions that you do as you read this interview.

Again, all I am saying to you is that, based upon a given set of facts, people come to different conclusions about them honestly and fairly.

Senator HATCH. But Mr. Hultman, that interview——

Mr. HULTMAN. And you cannot go back today in this room in 2 hours, 6 hours, 8 hours, or in a month, and recreate what really took place back there. We are still trying to figure out the investigations on who shot the President and whether Oswald did or did not.

Senator HATCH. I understand, but let us recall that interview with Mr. Buerger. Nard believes that Judge Weis threw the case. I personally do not believe that.

I know Judge Weis personally. I have always known him to be a very honorable man. I cannot explain his opinion. I do not think it really bears relevance to what the evidence was or what the case was. He admittedly wrote that opinion without the benefit of a trial transcript in a case as complicated as this.

So it may have just been a mistake, or he just went beyond what he should have done; I do not know. Maybe Mr. Nard is right; I hope not; and it is difficult for me to believe because of my prior knowledge of Mr. Weis. But that is what he was referring to—that he did not believe Mr. Nard's theory that Judge Weis threw the case.

Mr. HULTMAN. Again let me say to you, Senator, as Mr. Buerger says in the third paragraph with reference to the general matter we are talking about, "Regarding the criminal tax case against Nard, so-and-so believed Nard was guilty of failure to file."

So we have more—and when I say "we," I mean Mr. Nard and the Department of Justice and Income Tax had something beyond and in addition to the theory and the one count that you are talking about here. There were other counts which he pled guilty to.

Senator HATCH. Yes, but Mr. Hultman, let us be frank about it. Willful failure to file was not very much contested by Mr. Nard. That is different from willful evasion, which he strongly contested.

Mr. HULTMAN. I consider both of them to be very serious offenses.

Senator HATCH. Both are significant, but what I am showing to you is that there is a real question whether he willfully evaded his income taxes, and there is a real question of whether Armour did not set him up and fabricate the diversion of funds theory by their own documentation.

Be that as it may, you say you do not recall it and you do not even know about it. We have previously discussed Daniel Zaremba's appearance before the grand jury in 1972. He told the Secret Service that he was never asked any questions about Armour perjury. He was subpenaed in 1973, but after coming to Iowa he was sent back to Pennsylvania without testifying before the grand jury.

I would now like to ask you a few questions about an affidavit sworn to by Mr. Zaremba. That is hearing exhibit No. 31.

[Exhibit No. 31 follows:]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HEARING EXHIBIT #31

ARMOUR AND COMPANY, a corporation, :
Appellant, :
v. : No. 68-1372
R. STEWART SCOTT, WALTER A. SCOTT, JR. PORTER H. SCOTT and JOHN A. HARD, individuals trading as THREE RIVERS COMPANY, a partnership, and THREE RIVERS COMPANY, a partnership, :
Appellees. :

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF ALLEGHENY :

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT

Before me, the undersigned authority, a Notary Public in and for said Commonwealth and County, personally appeared DANIEL E. ZAREMBA, who, being duly sworn according to law, deposes and says the following:

1. Until April 30, 1970, I was an employee of Armour and Company, in such capacity, I served between December, 1967 and July, 1969 as Project Manager on the construction of Armour and Company's meat processing plant in Pittsburgh, Pennsylvania.

2. On or about August, 1968, defendant John A. Hard discussed with me the urgent need on the part of defendant Three Rivers Company of funds in order to make further progress on the construction of the Armour plant.

3. After conferring with Mr. Hard, I discussed with Mr. R. R. Martel, a Vice-President of Armour and Company, the cash problems of Three Rivers Company and suggested to Martel that Armour and Company release "retainage" ("retainage" is the amount of payment due Three Rivers Company but held by Armour and Company as security for the completion of the Project) on those portions of the project already completed by Three Rivers Company.

Mr. Hertel advised me to draft a letter on behalf of Mr. Nard formally requesting that more retainage be released; I did help Mr. Nard draft such a letter, and I am advised that such a letter was sent.

4. Armour and Company nevertheless refused to release more retainage, but did indicate their willingness to advance a loan to Three Rivers Company against progress. I am informed that before issuing such a loan, Armour and Company sent a Mr. Trumpeter, an Armour and Company accountant, and Mr. Michelson, Armour and Company's General Auditor, to investigate the books of Three Rivers Company.

5. Both Michelson and Trumpeter have informed me as recently as September 1, 1969, that the books of Three Rivers Company were found to be in proper form, and that, while there were some minor accounting deviations indigenous to all small partnerships, the books accurately reflected the financial dealings of Three Rivers Company.

6. Mr. Trumpeter further informed me specifically that with respect to the propriety of separate payments made to subcontractors on both the Armour and Company project and on the construction of John A. Nard's house in Sewickley the books as to the McCully - Smith Associates subcontracting work were kept separately under separate work orders. Trumpeter did not inform me that his investigation had revealed any mingling of funds between the two projects.

7. Armour and Company subsequently advanced two loans to Three Rivers Company against progress.

8. On or about July 24, 1969, I met with Mr. Thomas Jackson, at Mr. Jackson's request, in the offices of the law firm of Thorp, Reed & Armstrong in Pittsburgh. Mr. Jackson showed me a typed statement captioned AFFIDAVIT IN SUPPORT OF MOTION FOR PRODUCTION OF DOCUMENTS. Mr. Jackson displayed to me certain invoices, accounting computations and other documents and advised me that this material supported Armour and Company's charge that

funds intended for construction of Armour's meat plant were being diverted to the construction of John Nard's house. I told Jackson that I was ignorant of the financial transactions involved in connection with the meat plant construction and that the person most familiar with that subject was Mr. Trumpeter. Of all the documents examined, only an invoice from R. C. Iams & Associates, Inc. to Three Rivers Storage for "Model 50 Doors" raised any suspicion in my mind of diversion of funds. However, Mr. Jackson advised me that suspicion concerning this one item alone was a sufficient basis for me to sign the full statement he had drafted, and on this advice I signed the statement on July 24, 1969.

9. Several days subsequent, I realized, upon reflection, that I had lacked personal knowledge of the specific financial transactions of Three Rivers Company and could not in fairness permit the use of the statement I had signed. Accordingly, I sent a letter to Raymond Gass, Attorney for Armour and Company, expressing my objection to the use of that statement. I further advised Gass that I had no factual knowledge of any wrongdoing by John Nard or Three Rivers Company.

10. On many occasions during the construction of the Nard home, I, along with other Armour employees, was invited to and visited the site of the home. To the best of knowledge Mr. Nard was open and candid concerning the home construction.

/s/ Daniel E. Zarem[illegible]a

Sworn to and subscribed before me

this 14th day of October, 1970.

/s/ Mary Alice Kozlowski
Notary Public

My commission expires: March 18, 1974

Senator **Hatch**. This is an affidavit of Mr. Zaremba's dated October 14, 1970. It was prepared in opposition to Armour's claim against Nard to recover those funds allegedly diverted by Nard to his residence. I refer you specifically to paragraphs 2, 4, 5, 6, and 10.

Let us start with paragraph 2:

> On or about August 1968, defendant John A. Nard discussed with me the urgent need on the part of defendant Three Rivers Company of funds in order to make further progress on the construction of the Armour plant.

That is August of 1968.

Paragraph 4:

> Armour & Company nevertheless refused to release more retainage but did indicate their willingness to address a loan to Three Rivers Company against progress. I am informed that before issuing such a loan Armour & Company sent a Mr. Trompeter, an Armour & Company accountant, and Mr. Michaelson, Armour & Company's general auditor, to investigate the books of Three Rivers Company.

Paragraph 5:

> Both Michaelson and Trompeter have informed me as recently as September 1, 1969, that the books of Three Rivers Company were found to be in proper form and that, while there were some minor accounting deviations indigenous to all small partnerships, the books accurately reflected the financial dealings of Three Rivers Company.

Paragraph 6:

> Mr. Trompeter further informed me specifically that with respect to the propriety of separate payments made to subcontractors on both the Armour & Company project and on the construction of John A. Nard's house in Sewickley the books as to the McCully Smith associate subcontracting work were kept separately under separate work orders. Trompeter did not inform me that his investigation had revealed any mingling of funds between the two projects.

No. 10:

> On many occasions during the construction of the Nard home I, along with other Armour employees, was invited to and visited the site of the home. To the best of knowledge, Mr. Nard was open and candid concerning the home construction. Signed, Daniel E. Zaremba.

This is the 14th day of October 1970.

This affidavit is in direct contradiction to Mr. Trompeter's testimony before your grand jury that Armour was unaware of the subcontractors billing Nard for work on his home and that Armour did not know about Nard's home until after termination of the contract.

Did you at that time, or do you now, consider this to be pertinent information to Nard's allegations that Armour fabricated the diversion of funds theory?

Mr. **Hultman**. Again, my memory does not bring anything back to me that long ago in specifics. Let me say this: This was an affidavit as I read it here back in 1970. I think it would be fair for us to conclude that this affidavit was used by Mr. Nard and his counsel to substantiate, for the very purposes that you have indicated, in any of the trials as well as in the grand jury.

Again, as I said, without going back that far, I cannot assimilate—because there were an awful lot of documents—I just cannot assimilate and weed out one narrow item, as you are doing, and give you any conclusions from it; I simply cannot.

Senator HATCH. OK. Did you know that Mr. Zaremba would also have testified that Armour turned Nard in to the Internal Revenue Service—that they really brought these calamities on him?

Mr. HULTMAN. I do remember that there were a number of affidavits, as I recall, and testimony of Mr. Zaremba, because he was important, there is no question. I recall he was one of those listed. In fact, I think he was No. 1 in that sense of the word.

So I very carefully considered—I mean, I remember this in general—what it was he had in those various affidavits, and so forth. Beyond that though, I cannot take you any farther than that.

Senator HATCH. Let us turn to exhibit No. 32.

[Exhibit No. 32 follows:]

HEARING EXHIBIT #32

9/9/75

After cancelation of the Three Rivers Contract. on the Armour Meat Processing Plant Mr. Thomas Jackson entered the construction trailer and in the course of a conversation between he and Mr. Norman Trumpeter I overheard Mr. Trumpeter say to Mr. Jackson "How about informing the IRS about Ward" to which. Mr. Jackson replied "We've already taken care of that".

S.E. Jarenk

WITNESS: Kathleen Morris

Senator HATCH. This is the statement of Daniel Zaremba that Armour counsel Thomas Jackson told Armour accountant Norm Trompeter that Armour had turned Nard in to the Internal Revenue Service.

No. 32 is in Zaremba's handwriting:

> After cancellation of the Three Rivers contract on the Armour meat processing plant, Mr. Thomas Jackson entered the construction trailer. In the course of the conversation between he and Mr. Norman Trompeter, I overheard Mr. Trompeter say to Mr. Jackson, "How about informing the IRS about Nard?" to which Mr. Jackson replied, "We've already taken care of that." D. E. Zaremba. Witnessed, Kathleen Morris. Dated: September 9, 1975.

Have you seen that before?

Mr. HULTMAN. No, I have not. That is the first time I have seen it, at least to my knowledge. Again, maybe Nard sent this to me at some time or another—I do not know—but it is dated September 9, 1975, which is after my grand jury had completed, and he and I had had a very unhappy time at that point.

I do recall that he did continue to send correspondence of one kind or another and requested, and I said I was going to send, the materials back to him because the grand jury was finished.

I recall something to the effect that he wanted me to keep them, that he would pick them up personally, and then he did not pick up them personally, so I shipped them.

Maybe in that period this exhibit was sent to me. I do not have any knowledge of it.

Senator HATCH. I think you would agree with me that that exhibit is pretty important and that testimony would have been very invaluable.

Mr. HULTMAN. I think it is important; I certainly do.

Senator HATCH. Considerly Daniel Zaremba's statement to the Secret Service and Norman Trompeter's own notes of what he was asked in the grand jury, I think it is obvious that the grand jury was never made aware of that information; do you not think so?

Mr. HULTMAN. I cannot, again, conclude anything because I do not have any knowledge. I do not remember this information at all.

Senator HATCH. OK. I would like to refer you again to your October 24, 1975, letter to Nard—that is hearing exhibit No. 16—wherein you returned Nard's materials. Item No. 33 lists this very affidavit of Zaremba that we have discussed. Item No. 48 lists Norman Trompeter's deposition. Why was not this information utilized in your investigation?

Mr. HULTMAN. First of all, if you are just referring and including exhibit 32, that was after my grand juries completed. There would be no reason for me.

Senator HATCH. In that, I am talking about the affidavit, not that particular statement. I am talking about the affidavit and the deposition of Trompeter—the affidavit showing that Trompeter knew about the problems.

Mr. HULTMAN. Again I am saying to you that I do not have any independent recollection at all. The items that are on this sheet were items that, to the best of my knowledge, would have been analyzed by me and would have been used by me in the course of my analyses and the grand jury. But beyond that, I simply do not have any recollection.

Senator HATCH. The reason those are important is that they disprove the diversion of funds theory.

Mr. HULTMAN. Again, sir, that is a conclusion that you make.

Senator HATCH. How could you make a different one? What is your conclusion?

Mr. HULTMAN. I am not going to sit here and come to a conclusion, because without all of the documents and all of the testimony——

Senator HATCH. And these are employees of Armour & Co.; these are not just anybody. These are people who literally Nard says did it to him.

Mr. HULTMAN. No; I would not make a judgment of that kind without all of the evidence before me; without any question I would not, and I do not think any lawyer would. I do not think you would either.

Senator HATCH. Well, I sure do.

Let me go to hearing exhibit No. 33.

Mr. HULTMAN. First of all, you are assuming that it is true.

Senator HATCH. I am.

Mr. HULTMAN. You are also assuming that there is no evidence to the contrary.

Senator HATCH. Yes.

Mr. HULTMAN. You are also assuming that there is no evidence to prove something to the contrary, and without all of those things I do not think you can fairly come to a conclusion.

Senator HATCH. Keep in mind, we are taking it right out of Armour & Company's documentation, their employees, and their witnesses. How much better can you do?

Mr. HULTMAN. Senator, I am not arguing with you; and your conclusion I think you can logically come to in the processes you have gone through.

Senator HATCH. All right.

Mr. HULTMAN. But for you to ask me to make a value judgment, that is what I am saying I cannot do here.

Senator HATCH. All right. But you do agree that it could be logically concluded this way?

Mr. HULTMAN. There is no question about that in my mind.

Senator HATCH. All right. Let us turn to hearing exhibit No. 33.

[Exhibit No. 33 follows:]

HEARING EXHIBIT #33

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

Memorandum

TO : ~~Carl W. Belcher, Chief~~ FILES ✓
~~General Crimes Section~~
Criminal Division

DATE: May 2, 1975
RMW:mac
51-27-31

FROM : Richard M. Wachterman, Attorney
General Crimes Section
Criminal Division

SUBJECT: John A. Nard

The background of this case is set out in an August 7, 1973, memo from Assistant United States Attorney Kirshen to Gordon Achilles. In essence Nard and Armour have been involved in civil suits in Iowa and Pittsburgh stemming from plants which Nard was supposed to build for Armour. Armour claimed in the Pennsylvania case that Nard diverted several hundred thousand dollars of supplies to build his own house. The court gave Armour some $280,000 in damages. In the Iowa suit Nard won about $40,000 in damages. Subsequently Nard was indicted for tax evasion for not reporting the $280,000, which he diverted, as income. Nard pleaded nolo contendere according to his letter; he now claims he did so only to avoid disclosing evidence to the Iowa grand jury.

Nard has claimed that Armour perjured and suborned perjury in the civil suits. United States Attorney Hultman does not believe that Nard's claims are meritorious but has allowed him to testify before the grand jury and has called before the grand jury all witnesses who Nard has designated. U. S. Attorney Hultman believes the grand jury will not indict.

Senator **Hatch**. This is a Department of Justice memorandum dated May 2, 1975, from General Crime Section Attorney Richard Wachterman to Carl Belcher, the General Crime Section Chief in the Criminal Division.

I refer you specifically to the second paragraph. It says this:

> Nard has claimed that Armour perjured and suborned perjury in the civil suit. United States Attorney Hultman does not believe that Nard's claims are meritorious but has allowed him to testify before the grand jury and has called before the grand jury all witnesses whom Nard has designated. U.S. Attorney Hultman believes the grand jury will not indict.

Apparently Mr. Wachterman had conversed with you regarding Nard's case before he wrote this memorandum. The second paragraph states that you believed that Nard's claims were not meritorious as of the date of this memorandum, I would take it—May 2, 1975. Nevertheless, you still allowed Nard to testify before the grand jury, and you called those witnesses he designated.

Mr. **Hultman**. Sir, may I respond?

Senator **Hatch**. Yes.

Mr. **Hultman**. First of all, I do not recall any conversation, but I am not saying that what is reported here by this individual is not what they fairly and honestly indicate here.

The date is May 2, 1975, at least as I look at it here. At that time I had called and finished my 1975 grand juries except for calling back John Nard. If you will go back and look at the dates of my grand juries in 1975, two are before this date.

What I am saying to you is that at this point in time this fairly reflects what my feelings were. Senator, it fairly reflects what my feelings were at that time. In the sense it fairly reflects that I do not think that we have got anything that can be pulled together, I am at the end of the road; honestly and fairly, I am at the end of the road.

Now, what I then did—and I did it because in all fairness I felt that Jack Nard—again, there might be something that we could come to and come with yet. I had faith literally because of what had happened in the beginning with reference to the experts, and what took place there in my judgment was very important, and that influenced me throughout the grand jury period.

So what I then did—I did give him another opportunity, because I felt in all fairness he should, and I would do it again today, because I can say to you that there were items that troubled me at that particular time, but I honestly and fairly at that time could not come to the point as a prosecutor that I could go in and meet the standards and the tests that I had to meet.

Now, you looking at the same thing, maybe you would have concluded different. But that is the reason.

You will note, as I said, my grand juries and those witnesses had been called. The only thing that took place after that was the August grand jury.

Senator **Hatch**. OK. You were asked in December to comment on an affidavit of Peter Scott, a business partner of Mr. Nard. The gist of Mr. Scott's affidavit was that you told him in 1974 that Armour witnesses lied and gave false testimony in the grand jury.

I would like to refer you to your response found in the December 11 transcript on page 52, lines 4 through 18.

Mr. HULTMAN. What was the page number again, sir?

Senator HATCH. Fifty-two—lines 4 through 18. Beginning with line 4:

> I'm not saying that Porter Scott is saying a lie or anything here. What I am saying is that, to my knowledge, I would not and did not make a statement of this kind.
>
> If this was at an early point, a very early point in the investigation, I may well have made an observation of this kind because in my judgment early on—and I've made that very clear, and that's why I hung with it when everybody else, my assistants were saying, "No, we can't come to that kind of a conclusion"—because the first witness, the first allegation, the first accusation in my judgment had merit, I proceeded on that basis. I came from a different projection and a different point of view. Early on I honestly felt my preliminary conclusion was that there was perjury that had been committed. I make no bones about it.

I would like to show you Mr. Scott's affidavit again, and I would also like to show you a similar affidavit sworn to by Mr. Clark Mollenhoff, an independent journalist who is also is a Pulitzer Prize-winning reporter. This is hearing exhibit No. 34.

[Exhibit No. 34 follows:]

HEARING EXHIBIT #34

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

Before me, the undersigned authority, a Notary Public, personally appeared PORTER H. SCOTT of Pittsburgh, Pennsylvania, who, being duly sworn according to law, deposes and says that in 1974 in Cedar Rapids, Iowa, where a Grand Jury hearing involving Three Rivers Company and Armour Company was being held, U.S. Attorney Evan Hultman, in his presence and in the presence of J. A. Nard, said that Armour witnesses lied and gave false testimony in the Grand Jury Room.

Porter H Scott
Porter H. Scott

SWORN to and subscribed
before me this 9th day
of December, 1980.

Maryellen Post
Notary Public

My Commission Expires:

MARY ELLEN POST, Notary Public
Whitehall Borough, Allegheny County, Pa.
My Commission Expires February 7, 1983

AFFIDAVIT

Before me, the undersigned authority, a Notary Public, personally appeared CLARK R. MOLLENHOFF, of Lexington, Virginia, who, being duly sworn according to law, deposes and says that in 1975, U. S. Attorney Evan Hultman, told affiant in several telephonic conversations that Armour & Co. witnesses lied and gave false testimony in the Grand Jury regarding allegations of John A. Nard.

Clark R Mollenhoff

Clark R. Mollenhoff

Sworn to and subscribed
before me this 24th day
of July, 1981.

Donna E. Wood

Notary Public

My Commission Expires: 1-1-82

Senator HATCH. Mr. Scott says this:

> Before me, the undersigned authority, a notary public, personally appeared Porter H. Scott of Pittsburgh, Pennsylvania, who, being duly sworn according to law, deposes and says that in 1974 in Cedar Rapids, Iowa, where a grand jury hearing involving Three Rivers Company and Armour Company was being held, U.S. Attorney Evan Hultman, in his presence and in the presence of J. A. Nard, said that Armour witnesses lied and gave false testimony in the grand jury room.

That was sworn to and subscribed before Mary Ellen Post, a notary public, the 9th day of December, 1980.

Clark Mollenhoff gave an affidavit saying this:

> Before me, the undersigned authority, a notary public, personally appeared Clark R. Mollenhoff of Lexington, Virginia, who, being duly sworn according to law, deposes and says that in 1975 U.S. Attorney Evan Hultman told affiant in several telephonic conversations that Armour & Company witnesses lied and gave false testimony in the grand jury regarding allegations of John A. Nard.

That was sworn to and subscribed the 24th day of July 1981, before Donna E. Wood.

You stated that you had made such statements at the early point in your investigation. However, Armour witnesses did not testify until the final grand jury in 1975.

How could you make this kind of statement that Armour witnesses lied and gave false testimony in the grand jury at an early point in your investigation when Armour witnesses in fact did not testify until the final stages of your investigation in actually 1975?

Mr. HULTMAN. Senator, if I have not made one thing clear in the course of our discussion today, then let me make it clear one more time: That the first grand jury was held under circumstances where primarily one of my assistants, Mr. Sikma, had in a sense the most to do. The second one was that which had to do with Mr. Kirshen.

The grand jury which is my grand jury in a very practical sense—and that is the way I look at it—is the year 1975.

To go then to the two exhibits, I do not know of any grand jury that Mr. Peter Scott is referring to in 1974. If you can find one or if in these documents there is one, those exhibits do not indicate to me there was a grand jury in 1974.

So I would again stand on my statement that I made in the first instance. I take no quarrel with what the affiant says here, and the same way with the timeframe because I do not know when Mr. Mollenhoff—although I think it ought to be made very clear in all fairness that Peter Scott has a very vested interest in what we have talked about here as far as Mr. Nard——

Senator HATCH. You really have not challenged what he has said or what he has sworn to, have you?

Mr. HULTMAN. No, I have not. I have said very clearly that this is whatever evidently he heard from his point of view, and I have no argument with it. I do not remember, again, either of these conversations.

In the case of Mr. Mollenhoff, it is very obvious he has had a very vested interest with Mr. Nard. Mr. Mollenhoff has evidently for some reason a dislike for me. He has been going up and down the halls of Congress telling people certain things.

It is interesting also, if we go back—if I could have the letter that is one of your exhibits that we talked about, and that is that letter from the counsel in Cedar Rapids—could we find that one? It is very interesting to see who is carboned on that particular letter. It just happens to be Clark Mollenhoff.

Now, I will tell you, I get a little concerned as a lawyer as I sit here today when, as you look at the various exhibits that have been placed here—writings that have gone to judges before cases, writings that have gone to judges after cases. You, I am sure, have never even maybe seen that; I never have. To see affidavits that are made the day before the hearing—that affidavit of Scott, as I read it here, is the 9th day of December. It was the 10th day of December that I came here.

In the case of Clark Mollenhoff, as I said, I do not remember a series of conversations at all. I remember one single conversation with Clark Mollenhoff, and I want to relate what I remember about it.

He gave me a bad time in the phone conversation. He called me, and I tried my very best, as a lawyer first, as a prosecuting attorney second, to indicate to him in all fairness I was not going to talk about things that were going on in a grand jury. I did my very best. He got very unhappy about it—very upset. It was not a pleasant conversation, to be very frank about it.

I ask you then, why does Jack Nard—and I just ask the question; it does not need a response—on October 13, 1976, after he has made tapes of my conversations evidently with him back at a time that he is convinced that I am trying to do a good job for him. I do not know; I have never seen anybody who would do that to me before or since. I have asked for them so that I could respond properly, and I still have not received them sitting here in this courtroom right at this moment.

It is interesting that he would hire a lawyer in Cedar Rapids, Iowa, to interview me—which is what this is. This is an interview in every sense of the word, so he can try and put something together to come back and use it against this lawyer later, as in this courtroom or in this Senate room today.

Did you happen to note whom the carbon was sent to? Clark Mollenhoff?

Senator **Hatch**. Let me just say this: In reference to the Department of Justice memorandum to Mr. Wachterman that we discussed about 15 minutes ago, you apparently told Mr. Wachterman in the same timeframe—that is 1975, or at least you admit that could be the case—that Nard's claims were not meritorious and the calling of witnesses to the grand jury was only perfunctory on your part.

According to these affidavits, which you say could be true—and you have no reason to doubt the affiants, either Mollenhoff or Scott, although you have been irritated with the way Mollenhoff chatted with you on the phone; you have no reason to doubt their sworn affidavits. It raises the question why you were telling Nard that you believed in his case on the one hand, and yet telling the Department of Justice exactly the opposite, assuming that Mr. Wachterman reported in this report accurately.

Mr. **Hultman**. As I said, this comes as far as I am concerned at a time after the last grand juries, and that is what the timeframe shows. That is what I am saying—that in my mind and in my judgment that is what I would have indicated to somebody.

If this is as Mr. Wachterman, or whoever it was, concluded, then I am not here to say what he concluded was not fair from his standpoint. But I am saying to you point blank that up until the end of those grand juries in March, April, or May—whenever it was that I called the last group of witnesses—I had faith in that case up until the time that it began, because of witnesses not producing what Jack Nard said they would produce, putting it all together and coming to a conclusion that it was not a meritorious case and would not reach the level of proof that I needed.

That does not mean that I still did not feel that there were some witnesses, sometime, somewhere, who in my judgment did not truthfully state what in my gut and as I analyzed, as you have analyzed certain things, to be correct.

There is no question in my mind about that, and that is why I have said to anybody that has ever asked me in any official capacity of any kind that the case at the end troubled me, and that is one of the things that did trouble me.

I am not saying to you that the exact words he uses here in a memorandum—he does not quote me in here. I do not even remember such a conversation as we sit here today.

Senator **Hatch**. Mr. Hultman, one thing that does seem to come out of this is that Mr. Nard recommended a large number of witnesses for you interview and frankly you did not even interview most of his witnesses.

Mr. **Hultman**. That is not true at all, sir. That is not true at all.

Senator **Hatch**. OK.

Mr. **Hultman**. There were a number of things. As you will look at the witness list for example, most of those witnesses have testimony in one form or another in the earlier suits and in depositions, like Zaremba. That was a very critical part of testimony.

For example, two of the names that were on one of the lists are two fellows in that first sheet that you asked me about and said they do not pertain to Sioux City and are the Amalgamated Meat Cutter people. The testimony they were going to give—you do not have to call somebody on that testimony.

Senator **Hatch**. Let me say this: You are losing your voice, and I feel this has been a long ordeal for you, but I wanted to accommodate you so you would not have to stay and come back tomorrow.

Mr. **Hultman**. Yes, and I appreciate that.

Senator **Hatch**. That is the only reason I have agreed with Senator DeConcini to do this. And I understand the difficulties and the unfortunate inconvenience that this is.

Basically what you are saying is that you interviewed a number of Nard witnesses. You have to admit you did not interview a number of them also.

Mr. **Hultman**. That is correct, sir.

Senator **Hatch**. Let me just say this: I may have some other questions; but, as I understand it, you have some exhibits you would like to put in at this point?

Mr. **Reavely**. Yes, Senator. We have 12—well, 13—and then we have 14.

Senator HATCH. How long do you think it will take you to put these into the record?

Mr. REAVELY. Most of the exhibits are the same as——

Senator HATCH. They are already in the record?

Mr. REAVELY. Yes.

Senator HATCH. Do you want to explain a few aspects about them? Do you need to explain them, or do you just want to put them in?

Mr. REAVELY. There are a couple I think we should explain.

Senator HATCH. How long do you think it will take?

Mr. REAVELY. About 10 minutes.

Senator HATCH. That will be fine. I am worried about our court reporter; and, frankly, I am worried a little bit about Mr. Hultman.

You have lost your voice, and I know what that is like. I lose mine too all the time, and it is no fun.

So let us turn it over to you at this time and put your exhibits in the record and have you say whatever you would like to say.

While you are getting that together, Mr. Hultman, let me just say this: On that witness list you say Nard provided for you, the only ones that I know that you interviewed were Dave Duensing and Zaremba. I do not think you ever interviewed Raymond Gass, or William McKavis, or James E. Levitt, or Jerome Trautman, or Peter Novak, or Harris Ashton, or Walter Clark, or Ralph Hartel. You did interview Nard as well. Am I correct on that?

Mr. HULTMAN. I cannot——

Senator HATCH. You cannot quarrel with that?

Mr. HULTMAN. I do quarrel with what you just said.

Senator HATCH. OK.

Mr. HULTMAN. And I do not quarrel in that sense of the word, but you will note that there were a number of people that were called to the grand jury, and those were interviewed without any question.

I had phone conversations—and whether you call them interviews or not—with witnesses. Again, I do not remember which ones.

Senator HATCH. Did you make notes of those conversations?

Mr. HULTMAN. I am not sure, sir. I would assume that I probably did, but again I do not have any record of them in any way.

Senator HATCH. All right.

Mr. HULTMAN. What I did is, those that I felt in my judgment should be brought were brought. I analyzed the transcripts, because there is a terrific amount of previous testimony in the transcripts and these affidavits, et cetera, depositions, and so forth and so on.

So it was very unusual from that standpoint, from other cases, that you have testimony, and that is what you are primarily dealing with—recorded testimony. So it was a case where you would not bring every witness in for the first time like you would in any other type of case.

Senator HATCH. All right.

Please proceed, Mr. Reavely.

Mr. REAVELY. Senator, just to save Mr. Hultman's voice I will explain our exhibits.

Senator HATCH. We would be happy to have you explain, and Mr. Hultman may interject at any place.

Mr. REAVELY. Our first six exhibits have already been entered into evidence. I believe they are your exhibit 17, which consists of six Secret Service interviews.

Our exhibit No. 7 is the Secret Service interview of Martha Dalstrum, which is also already an exhibit.

Our exhibits 8, 9, and 10 have to do with Nard's allegation that Mr. Hultman had something to do with Nard's guilty plea in the tax case.

Senator HATCH. All right. We will be happy to accept them and put them in the record at this point.[1]

Mr. REAVELY. I expect that there would be some testimony from Mr. Hultman.

Senator HATCH. Do you wish to comment?

Mr. REAVELY. Exhibit 8 is the first pleading that was filed by Nard in the western district of Pennsylvania.

Mr. HULTMAN. What these exhibits are—and I did refer to them earlier, Senator—is on this issue that I had some way counseled and was the reason Nard made his plea. Exhibit 8—the two exhibits are indicative of what was to be filed and what was filed.

Exhibit No. 10 was a notation that I made that was in these matters that I went through in Justice on Monday afternoon. I think I should read it. It is not that long.

Senator HATCH. Fine. Go ahead.

Mr. HULTMAN. It states as follows:

> Just before entering grand jury Nard handed me a copy—attached—of his motion to withdraw defendant's plea of nolo contendere in his criminal case. Upon reading same I exploded. I confronted him that paragraph 4 was a total fabrication, which he had stated to me on a previous occasion and had admitted was incorrect when I challenged him on that occasion. He then stated it was not a correct statement, that I had not even discussed such a matter prior to his plea with him, that it was his lawyer's mistake. I confronted him with the statement during the grand jury proceeding during the day, and he stated categorically that I had not advised him in any way. I demanded the pleading be corrected, and he assured me that it would.

And then I made a notation,

> See the amendment filed in the action. He still tries to tie the grand jury proceeding and the cause for his plea together. There is absolutely no relationship between the two, except by Nard after the fact to justify his plea.

I think that was what the interview of Martha Dalstrum probably was referring to when she said whatever it was she said.

Senator HATCH. Let the record show, for whatever it is worth—and I have never quite been able to understand it—at or about that time Nard called me and said you had recommended and, as I recall, his counsel at that time either made no recommendation or acceded to your recommendation that it would help him in his case to enter a plea of nolo contendere.

I can remember hitting the ceiling and telling him he should not do that because he was not guilty, because he did not divert funds into his house; Armour diverted the funds and fabricated the situation; and I felt a reasonable presentation to a jury would prove that. I can remember that very well.

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[1] Not available at press time.

I cannot say that you ever did that. My problem is that I cannot conceive of any attorney recommending an innocent person to plead nolo, because even though a nolo contendere plea is no contest it is still considered the same as a guilty plea, as you know. But I still remember that, and I can appreciate how you feel.

He definitely had that feeling and definitely asserted that. And I said, "Well, what would be the rationale behind that?" I said, "You are crazy to do that. You cannot enter a plea of guilty because you are not guilty." He said, "I know I'm not guilty, but it will help my case;" and I said, "Well, how can it help your case?"

Mr. HULTMAN. In another document—and I do not remember which one it was—in a letter to the Department he indicated—and maybe counsel can help me—that he had pled for more time because he needed time. It was a different reason—that he needed time.

Mr. REAVELY. It was in a Department of Justice——

Mr. HULTMAN. It was a letter he had sent to them.

So I do not know what reason.

Senator HATCH. His claim was that it would prejudice his case in the grand jury and that you had told him that and—well, I cannot remember well enough, but it may have had something to do with the consolidation of the case; I cannot remember. All I can say is that I know he was sincere, thinking he was not guilty and yet thinking he had to do that and that you had recommended that he do it.

I will say this: Mr. Nard is not stupid. He is a very bright guy.

Mr. HULTMAN. Let me say unequivocally that that is not a fact.

Senator HATCH. I understand that to be your statement.

Are there any other statements or exhibits that you would care to put in at this time?

Mr. REAVELY. Exhibit No. 11 was a proposed affidavit by myself. I understand that the question is moot because it had to do with my conversation with U.S. Attorney Reynolds yesterday as to any pending grand jury proceedings in the northern district.

Senator HATCH. He said there are no pending grand jury proceedings?

Mr. HULTMAN. He said in respect to Reynolds' office the Nard allegations concerning Hultman and his administration are complete.

Senator HATCH. I thought you said earlier that Reynolds had told you that there is no presently contemplated or presently convened grand jury.

Mr. REAVELY. It is what I have.

Mr. HULTMAN. I think you had better put it in the record.

Senator HATCH. Yes, we are putting it in the record.[1]

Did Reynolds say whether he is going to convene a grand jury in the Nard case at all to investigate Mr. Gass and others with Armour?

Mr. REAVELY. That is not discussed and matters he would not discuss with me.

Senator HATCH. I think that is probably proper.

Mr. REAVELY. And I told him I understood that position.

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[1] Not available at press time.

Senator **Hatch**. I had misconstrued what you said earlier—that he had not intended to call a grand jury—but you are saying you do not know.

Mr. **Reavely**. What he authorized me to put in an affidavit and what I agreed with him was that was that there are no grand jury proceedings being conducted or contemplated concerning the Jack Nard allegations or Mr. Hultman's administration, and that he said that he would not state or discuss with me any other matters that might be ancillary to the situation, for obvious reasons.

Senator **Hatch**. All right. Are there any other exhibits?

Mr. **Reavely**. Yes. We have exhibit No. 12, which is the Secret Service statement of George M. Keller, Jr.[1]

I believe Mr. Hultman has gone into that in his testimony this afternoon. We believe the significance of this statement is reflected in paragraph 5 of the statement, which states that Keller commented that after he had spoken to the grand jury and had answered several questions someone asked, "Are you telling us that you think Nard is a little nuts?" He said yes, and another jury member opined, "We do too."

Again, I believe this goes into the area of testimony as to what Nard told Hultman and his staff what his witnesses would say many times did not equate with what the witnesses told Hultman.

Senator **Hatch**. I think some of the documents we have been reading from today and some of the allegations that have been discussed today were applicable to any person who had to live with this for 13 or 14 years. They might feel a little nuts themselves after a while banging their heads up against brick walls. But I can assure you he is not nuts.

Mr. **Reavely**. That is just a comment in one of the Secret Service responses.

The other two exhibits—exhibit No. 13 I had referred to before, and that was the court ruling from Judge McManus on Armour & Co. concerning the analysis of the expert testimony.

Our last exhibit—exhibit 14—would be the Secret Service interview of Mr. Buerger, which Mr. Hultman has already discussed.[2]

Senator **Hatch**. Is this all you care to say, Mr. Hultman?

Mr. **Hultman**. I just might say in conclusion that I wish to thank you, Senator, and Senator Grassley and Senator DeConcini for the opportunity to come up here before you today. I feel I have been treated very fairly, and although we have had some exchanges they were for good reason.

I want you to know, lastly, that, as I indicated earlier—because it was Senator DeConcini and I who had had this exchange when he was here the first time around—I feel that all of the adverse publicity that has come my way has certainly impacted on my reputation, but I feel very strongly that decisions have to be made by prosecutors, and sometimes the very toughest decisions that you have to make are when you have got to say no.

That is a very difficult one, and it is a difficult one for me in this instance, but I firmly feel that out of all these things—that grand jury, this publicity, these events—still, if they go to better the system—and that I believe is the real reason for us being here—they will not have been in vain and will have been very profitable and for good ends. So I want to thank you today.

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[1] Not available at press time.

[2] Not available at press time.

Senator HATCH. Thank you, and I appreciate your kind remarks. This has been a very difficult day for all concerned. I feel pretty beaten up myself, I am so tired but, of course, I do not blame you or this hearing for it; I have gone through a lot of other problems this week that have been very tough.

Let me say this, Mr. Hultman: I like you personally; I have no problem with that. I have wanted to get this put away.

I want to compliment your two Senators.

At the time Senator DeConcini and I met concerning your first hearing we knew there were a lot of discrepancies, disparities, and what looked to be outright false testimony. Under those circumstances, we did not want to handle it any further. We were going to submit that to the Justice Department and let them make the determination as to what should be done.

Senators Jepsen and Grassley came to me and, I might add, in a little state of agitation, feeling that you deserved to be able to explain any discrepancies, disparities, or outright difficult statements.

I immediately called Senator DeConcini and said, "Mr. Hultman does want to be able to explain away any problems you have with his testimony."

He immediately said, "What do you want to do?" and I said, "I think we should give him that opportunity, and I think we should extend this courtesy to our two colleagues."

He agreed to that, and I give him credit for being very fair, and he always has been; and, of course, I think that is one reason why both Senator DeConcini and I have been chosen by the Judiciary Committee to look at these 16 cases.

It has been a very difficult position for me to be in. I have not wanted to be in it. But Senator DeConcini, like all Senators, is so busy that he just felt that he needed some help in this hearing, and so he asked me to come, and I agreed. I felt that maybe I could help in the hearing without necessarily hurting anybody but just getting the facts out and let the public make the decision.

Now, I have said I like you; I do personally. I liked you then when I first met you back, I take it, in 1971. And I certainly like my colleagues.

There are many aspects of your testimony here today and certainly before that bothered me and many aspects here today that continue to bother me, because it is not a question whether you or I are good or bad people. The question in this case is, has there been an abuse of prosecutorial discretion? Has the Justice Department done what was right here? Have they really given this a thorough investigation like they said they did, when the facts absolutely show otherwise? Has this man really been shunted from pillar to post just because some people think he is obnoxious, when in fact a lot of his abrasiveness comes from the fact that he has had to bang his head up against brick walls ever since this matter occurred?

There is reasonable evidence for reasonable people to conclude that Armour really stuck it to him—that Armour may very well have fabricated the diversion of funds theory.

This is a complex case. I suppose I could conclude that any U.S. attorney or assistant U.S. attorney—or attorney for that matter—could fail to grasp all of the details of this case, and especially since Mr. Nard himself is a difficult person.

I found him to be a nice person, an honest person, a person who has an elephantine memory, who can remember facts and absolutely show that they are true later with documents, and I can understand the way he feels. And I think, having gone through this, maybe you have a little greater feeling for what Mr. Nard feels. I think you feel that way too; do you not?

Mr. HULTMAN. Yes, I have indicated that.

Senator HATCH. I am worried because liking you does not take away my obligation to look at this matter or Senator DeConcini's obligation.

Like I said, I have wanted him to look at it because I used to represent Mr. Nard. I have never had a fee from him and frankly never will, and I have to admit that I have had great feelings of sorrow for the pain that he has gone through through the years, because really literally he has been shunted from pillar to post.

I am concerned about some of the failures that have occurred in this case, and I think I am going to have to study the transcript. I know Senator DeConcini will now, since he has missed a good percentage of what has gone on here because of pressing business at home.

Let me just say this: I personally appreciate your willingness to go through this very long hearing, your patience—because we have asked some very tough questions here—and your acknowledgment that you believe we have been fair. I think you do believe that.

Mr. HULTMAN. Yes; I indicated that, sir.

Senator HATCH. I would feel very bad if anybody thought that I was not fair.

In that regard, I have had to sit here and just take some very bad abuse by some media who have never come and asked me what went on. I am not sure whether I would have sat down and told them anyway until we had this hearing, but I have taken the abuse; Senator DeConcini has; you have; Mr. Nard certainly has; and everybody involved in this case has taken a lot of abuse because there has never been a really prodigious effort to bring out the true facts of this case.

I think this is as close as anybody has come to that, and I think you have played a very effective role here today in trying to answer these questions as best you can and helping us to get to the bottom of some of the problems that existed in your prior testimony.

Personally, I just hope that people will read this report, that they will read your testimony here today, that they will read some of the points that have been brought out, and give everybody the benefit of the doubt, and let the chips fall where they may.

With that, let me turn to Senator Grassley, whom I greatly admire.

Senator Grassley, if you would care to put anything in the record at this point, I would be happy to have you do it.

Senator **Grassley**. I can only reiterate what I have said about the long battle to have this hearing and my expression of appreciation for your scheduling it at this point.

I consider all the things that I wanted to accomplish—having an opportunity for Mr. Hultman to respond to the earlier investigations and even the recent investigation—as my goal, and my goal has been met. Obviously, I have told Mr. Hultman and I have told my staff that the record will have to speak for itself.

Senator **Hatch**. Do you feel, Mr. Grassley, that we have treated Mr. Hultman fairly?

Senator **Grassley**. I do.

Senator **Hatch**. I appreciate that, and I think Senator Jepsen will appreciate that.

Mr. Hultman, let us recess these hearings. If you have any additional information, we will keep the record open for at least 30 days. If you need longer, just call us. Next time—if it ever happens that you get a subpena or even a request from a congressional committee to appear and it is inconvenient, and a few days or a few weeks will make a difference, do not be afraid to call. We really are reasonable people.

Mr. **Hultman**. I had that clear understanding for this hearing, sir.

Senator **Hatch**. We have tried to accommodate you, and you have been definitely very kind in accommodating us. I think you realize that we had this set for the 20th but we moved it up to try and shorten this time, so that you could come in and make this case.

I think there have been a lot of facts brought out here and in the report. I believe that report to be totally accurate, and I endorse that report. I would like you to read it again.

If you feel you can give any additional light on this, we would love to have that. If you feel there are some documents that have not been brought out here that need to be brought out, we would like you to do it. You may do it in writing. We would appreciate it if it was in affidavit form, so that we literally do not have to call you again.

Mr. **Hultman**. Yes, sir.

Senator **Hatch**. If there are any other difficulties, we will notify you; or if you have any, you notify us.

Senator **Grassley**. Mr. Chairman, I would like to ask at this point—there has probably been, who knows what, that has not been made a part of the record, and if I wanted to make it part of the record or have it made available to me or my staff or Mr. Hultman—and I do not have anything specific in mind, but I would submit to you in writing those requests. Would that be all right?

Senator **Hatch**. We will certainly look them over—you bet.

Senator **Grassley**. Would I be able to have access to any documents that have not been made a part of the record?

Senator **Hatch**. I do not see any reason why not.

Senator **Grassley**. OK.

Senator **Hatch**. Any documents you want you can have.

Senator **Grassley**. OK. Thank you.

Senator **Hatch**. Let me just say this: Mr. Hultman, the fact that I like you does not mean that I am not concerned about the way this case was handled and your prosecutorial obligations. I understand that anybody can blow a case; anybody can make a mistake.

I think you understand too that this man has suffered a long time, and if he is right he has really been mistreated. And I think there is plenty of evidence here to show that he is right. So I am still as concerned, and I just want to make the record clear on that point.

With that, we will recess these hearings and I appreciate your being willing to go through this, and I hope you appreciate the fact that my wife is very aggravated with me.

Mr. HULTMAN. Thank you, sir.

Senator HATCH. With that, we will recess the hearing.

[Whereupon, at 8:20 p.m., the hearing was recessed, subject to the call of the Chair.]

APPENDIX

REPORT

To: Judiciary Committee Members

From: Evan L. Hultman

Date: November 6, 1981

RE: Hultman's Final Response to the Hearings Before the Committee On the Judiciary, United States Senate, Held Wednesday, October 7, 1981

On Wednesday, October 7, 1981, I appeared in a hearing before the Committee on the Judiciary, United States Senate. After reflecting on the questions and answers and reviewing statements made by the Committee Members, I feel it is appropriate to submit a brief additional written response.

Senator Charles Grassley in his opening statement at the hearing (Tr. p. 22) stated his concern as to the thrust of the hearing:

> "...I have concerns greater than ever before about the nature of what this committee is up to with these investigations and the price we might be paying for this type of activity."

Senator Grassley further stated that in a meeting a week previous to the hearing date, Senators Thurmond and DeConcini gave very positive reassurances to him the Committee would never re-try cases nor second guess anyone (Tr. p. 23). It is very apparent, however, that the Committee Members had different objectives on October 7th and the hearing was held for two completely different purposes.

I testified on December 11, 1980 before this Committee on extremely short notice with no opportunity to review my files or other pertinent information all of which had been reviewed by staffers. I stated this very clearly in my opening remarks on the 11th . After review of the testimony I submitted on the 11th, it was alleged there were contradictions between the records and my testimony. It was my understanding the October 7th hearing was for the purpose of augmenting my testimony and to clarify any misunderstandings. Senator DeConcini as chairman of the October 7th hearing stated the purpose of the hearing on page 84 of the transcript:

> "The purpose of this hearing, as far as this Senator is concerned, is to review your testimony and permit you to make any explanations of any contradictions that were or might have been made for whatever reason on the December 11, 1980, hearing." (Tr. p. 84).

Senator DeConcini stated again the purpose of the hearing:

> "We are not here trying to determine, and never have been here today to determine, what the merits of the Nard case or the Armour case were. We are here to grant you an opportunity and to grant us an opportunity to clarify what we considered serious misstatements in the testimony on the 11th.
>
> I think it is important to keep everyone's eye on that ball. If we do not, we are going to get bogged down in exactly what Senator Grassley has objected to of re-trying the case". (Tr. pp. 112-113).

This in fact was the purpose as I understood it; this was the request I made. However, Senator Hatch and the writer of the report have enlarged the scope of the hearings and have made legal conclusions not supported by the facts. Senator Hatch and his staff have also second guessed grand jurors, lawyers and judges who have heard the evidence first hand. The various reports submitted by Senator Hatch's staff have contained unsupported Nard allegations, unfair innuendos, half quotations, misquotations and words taken out of context as pointed out during the hearing. These reports, each of which made differing allegations, are to the press and public unfortunately clothed with the stamp of senatorial approval. Senator DeConcini cautioned all as to the limited value of the latest report: "I think it is proper for you to have an opportunity to respond to the staff report. That is only a report. It is not a conclusion." (Tr. pp. 84).

Despite the statements made be Senators DeConcini and Thurmond before the hearing and the statements of Senator DeConcini during the hearing, it was quite obvious by his questions and editorial responses, Senator Hatch sought an all together different purpose at the hearing:

> "Senator Hatch. Mr. Hultman, look. I have just told you that it is written perhaps ambiguously. However, the issue here is not whether there is presently a grand jury going on.

> The issue is abuse of the prosecutorial function -- failure to prosecute diligently and effectively when you have the documents and facts at your disposal and whether or not the Justice Department and the Public Integrity Section did their job." (Tr. pp. 98-99).

Senator Hatch reaffirmed his purpose of the hearing when he stated:

> "Mr. Hultman, the scope and depth of your investigation into Nard's allegations are of course the most critical issues before this committee." (Tr. p. 208).

The thrust of Hatch's questions were aimed toward re-trying the Nard cases and proceedings and second guessing decisions that were made during the last decade. Not only is this an unfair task but an impossible one.

Senator DeConcini had to leave the hearing at midafternoon for other Senatorial duties and in his absence Senator Hatch chaired the hearing. By Senator Hatch's repeated statements throughout the hearing, his obvious attitude was already solidified regardless of the testimony. Senator Hatch stated:

> "In each of these cases, Nard was found in breach of contract on the basis of testimony that was clearly perjurious in our opinion, as will be demonstrated in the body of the report for those of you who care to read it." (Tr. p. 14).

On page 15 of the transcript, Senator Hatch further said:

> "My own view of the record generated in this case over the last 13 years has convinced me

> beyond doubt that Mr. Nard was
> the victim of perjured
> testimony."

Senator Hatch even refers to the staff report (exhibit 39-A) that was released less than 48 hours before the hearing as evidence of a strong possibility of additional perjury by potential witnesses. It is important to note that the person being examined and relied upon as primary proof of perjury in the ex-parte interview testified he "was not aware of any willful wrongdoing". Further, on page 15 Senator Hatch states "John Nard -- I believe an innocent victim of the system". Two days before the October 7th hearing, a 71 page staff report was submitted on October 5th to which I have already submitted a personal response at the outset of the hearing. Even before my testimony on October 7th, Senator Hatch in his opening statement said: "I personally believe that the report has not only been well-done and well researched but makes a very good case in favor of Mr. Nard. I commend any person interested in this matter to read it, because it is extensive and is filled with detail." (Tr. pp. 20-21). Toward the latter part of the hearing, Senator Hatch as the Chairman stated that I (Hultman) would never forget certain questions because "...you would never forget them because they tend to show that Nard was wrongfully convicted of federal income tax evasion." (Tr. p. 315). At the end of the hearing Senator Hatch states "I believe that report to be totally accurate and I endorse that report. I would like you to read it again." (Tr. p. 360). If Nard was subject to questioning in a hearing where the chairman had already stated his position, Nard and his counsel would clearly recognize the absence of due process and fairness.

Regardless of the bifurcated approach used by various members of the Committee, my answers were responsive to the thrust of the questions asked by Senator DeConcini and were also responsive to the Nard issues raised by Senator Hatch. It is very clear by reading the transcript that the alleged inconsistencies in my December 11th testimony were a result of presenting my self before the Committee on extremely short notice without the benefit of reviewing events which had transpired 5-10 years earlier. This conclusion is supported by an opinion by the Office of Senate Legal Counsel, "our own review of the material as measured against the standards for a perjury prosecution, persuades us that the material does not reach the level of known falsehood which constitutes perjury". (Tr. p. 28). Similarly, the inconsistent statements made by Senator Hatch during the most recent hearing do not constitute perjury. On page 18 of the transcript, Senator Hatch states, "Senator DeConcini has asked me to participate in the hearing and to assist him. I do know a little about the case", and I do know a lot about Mr. Nard." Then on page 196 of the transcript, Senator Hatch says, "I know a lot about the case." What does Senator Hatch really know about the Nard case? I have been criticized because of honest mistakes as to my memory of events that occured 5-10 years before. Even Senator Hatch can make a mistake, when referring to that complicated matter. On page 212 of the hearing record, Senator Hatch is talking about Mr. Zaremba's deposition and he makes a mistake as to the record. On page 213 Senator Hatch states, "I understand. Nard is referring in that note to Daniel Zaremba, the Armour project manager on the Sioux City job. I do not know how I got mixed up on that."

An important issue that must be raised is apparently a very serious breach of confidentiality since the recent hearing. In preparation of the hearing I reviewed documents at the Department of Justice; we were given grand jury statements with the names of the grand jurors blotted out to protect the privacy of the grand jury and its proceedings. Senator Hatch on page 236 of the transcript made reference to privacy consideration of the grand jurors. "We will not use their names because of privacy considerations, but they are revelatory." (Tr. p. 236). The Justice Department was justifiably concerned in allowing me or my counsel to use grand jury interviews at the hearing unless the names were whited out. Our hearing exhibits (Exhibits 1 through 6) had the names of the grand jurors whited out. My counsel and I expected to work within the guidelines promulgated by the Justice Department. Since my hearing on October 7th a very disturbing event has happened. One of the grand jurors whose statement had been used in the staff report and by the committee during the hearing called my office.

I was reluctant to talk to him but when he called again I returned his call. He told me after my October 7th testimony, he had three different phone calls from Jack Nard, Clark Mollenhoff and a newspaper reporter concerning the Nard Grand Jury proceedings. They specifically asked him questions about information that was contained in his Secret Service interview and requested him to make further statements. Some of the implications Nard, Mollenhoff and the reporter were suggesting were, in the mind of the juror, untrue. I did not think it was proper for me to pursue the matter so I turned this issue over to my legal counsel. Senator Hatch's thrust of all his attempts to exonerate Jack Nard has been that the Judiciary system should be fair and should be applied equally to each individual. This violation of privacy of the grand jurors and their proceedings is a deliberate act and is inexcusable.

In a total review of all of the hearings, transcripts and the volumnous number of documents, one point now should be emphasized. Nard and the staff reports have made accusations concerning conspiracy, perjury, obstruction of justice and professional incompetence on the part of federal officials. What has been continually overlooked and obviously disregarded by Nard and the staffs are the professional statements, testimony and opinions of Nard's own personal attorney. In the December 11, 1980 hearings, Nard's attorney testified. A quick review of his statement clearly reflects the position of Mr. Buerger that the claims of Nard are totally frivilous.

Buerger said, "It's my duty to tell the Committee that the Department of Justice cannot have been derelict in its investigation because there was nothing to investigate." Buerger further testified, "I'm compelled, to put it most charitably, to say that Mr. Nard is not thinking clearly." His legal counsel is a well known, respected and competent attorney. When Nard's own attorney does not question the actions of the judges and other attorneys, it makes it extremely difficult, if not impossible, for Nard and staffers to do so.

My two committee hearings have been very frustrating experiences but I have honestly answered the questions in every instance. My office acted with a blend of prosecutorial discretion, responsibility and ethics. As Senator Hatch said in his opening remarks on October 7th, there must be considerable latitude in reposing trust in those charged with the awesome responsibility of deciding in truth who goes to jail and who does not (Tr. p. 9). Prosecutors rely on their intuition, experience and knowledge to make decisions under circumstances and conditions that never can be reconstructed. As in Senator Hatch's own words "our documents speak for themselves." (Tr. p. 35). If all of the documents are read in their entirety without extracting portions of paragraphs or portions of sentences to make a point, they affirm what federal judges, federal prosecutors and grand jurors have uniformly decided in the past two decades. Jack Nard was given more than his day in court in more than one state and his claims fail not only because they lack the proper factual foundation but he himself lacks the credibility necessary to prevail in a court of law.

Respectfully submitted,

Evan L. Hultman

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November 5, 1981

Senator Charles E. Grassley
232 Russell Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

This letter is in response to your inquiry concerning the circumstances under which I testified at a hearing of the Senate Judiciary Committee on December 11, 1980. My testimony concerned the decade-long campaign of John A. Nard to overturn a federal district court judgment against him in Pittsburgh, as well as his pleas of guilty to two counts of failure to file income tax returns and of nolo contendere to one count of tax evasion.

When reports appeared in the national and Pittsburgh news media in June, 1980, that the Senate Judiciary Committee was conducting an inquiry into this matter, I wrote to each member of the Committee expressing the outrage of the Allegheny County Bar Association, of which I was then President, at Mr. Nard's libelous and baseless attacks on Circuit Judge Joseph F. Weis, Jr., who was the trial judge in the Pittsburgh case and whose reputation for honesty and integrity is impeccable. On October 6, 1980 I was advised by telephone by counsel to the Committee that Mr. Nard's charges had been found to be so utterly wanting in merit that the Committee would not pursue them any further. When reports later appeared in the media that the Committee had scheduled a hearing on the matter for December 11, 1980, I requested an opportunity to appear before it to oppose Mr. Nard's campaign of vilification and innuendo against Judge Weis.

These, then, were the circumstances under which I appeared at the hearing of December 11, 1980. At that time, I was given an opportunity to submit a written statement and to make a brief oral statement.

The focus of my written and oral remarks was the utterly groundless nature of Mr. Nard's request for an investigation by the Justice Department of Judge Weis's decision in a then eight-year old lawsuit between Mr. Nard and his associates and Armour & Company. I pointed out that Mr. Nard's attacks upon that decision had been rejected on appeal by the United States Court of Appeals for the Third Circuit, as had his later efforts to have the judgment reopened in the district court. I also pointed out some of the more glaring errors in a staff report of the Committee which appeared to lend some support to Mr. Nard's charges. I urged the Committee not to permit itself to be used to place an imprimatur of legitimacy on Mr. Nard's baseless charges.

Recently I had an opportunity to review an updated "Staff Report on the John A. Nard Case", dated October 5, 1981, which I understand was one of the subjects of another hearing of the Committee on October 7, 1981. Because this report continues to repeat the same glaring errors as did the prior report, I request leave to supplement my earlier statement to the Committee with this letter and its enclosure, and ask that they be made a part of the record.

Like its predecessor, the more recent staff report is based, not upon an analysis of the evidence of record in the Nard case, but upon Mr. Nard's own version of his case. The report purports to set forth as established "facts", not the facts of record as found by Judge Weis, but Mr. Nard's own version of those facts. It is so filled with errors, unsupported allegations, bias and prejudice, that it makes a mockery of any pretense of objectivity.

Judge Weis's decision stands on its merits and requires no apologies. His findings of fact were affirmed by the Court of Appeals which also ruled that he had made no error of law in rendering his decision. Yet the staff report attempts to reargue the facts and the law some eight years after the case was finally decided in the courts. Further, in making this reargument, the report treats as "facts" statements which were not even a part of the record of the case.

For example, at several points in the report, statements by one Daniel Zaremba are discussed as if they were a part of the trial record which should have been considered by Judge Weis. These statements were in fact not a part of the record, were not offered in evidence at the trial, and could not properly have been considered by Judge Weis in deciding the case. Moreover, as the record demonstrates, even though he was available, Zaremba was deliberately not called as a witness at the trial by Nard or Armour.

Likewise, statements by one Trompeter are alluded to as though they had been admitted in evidence at trial. In fact, they are statements from a deposition which was never offered in evidence and was, thus, not a part of the trial record.

With respect to the "diversion of funds" finding of Judge Weis which was affirmed by the Court of Appeals but is reargued in the staff report, the evidence fully supports Judge Weis's finding of such a diversion. Indeed, the evidence, particularly Extra Work Authorization No. 40, a copy of which was attached to my written statement of December 11, 1980, would have supported a finding not only of diversion but of fraud. However, as Judge Weis' opinion points out, whether the practice was fraudulent or merely negligent, restitution was required in any event.

There are many other defects in the staff report reflecting an incomplete, biased and one-sided review of the trial evidence. It would serve no useful purpose to further detail them here. It is sufficient to observe that the shortcomings of the staff report demonstrate the superiority of the adversary process of trial and appeal in which both sides of the case are carefully considered under recognized principles of law. In this regard, the report also demonstrates the validity of your own misgivings about Senate staffers attempting to serve as a "super Court of Appeals."

In conclusion, I submit that Mr. Nard is attempting to misuse and abuse the Senate Judiciary Committee and that the Committee should not permit itself to be so demeaned. As aptly stated in the enclosed editorial from the Pittsburgh Post-Gazette of October 17, 1981, which I request be made a part of the record, it is time to close out the Nard case.

I appreciate this opportunity to respond to your inquiry.

Very truly yours,

MANION ALDER & COHEN

By Paul A. Manion

Paul A. Manion

PAM:cms
Enclosure

Pittsburgh Post-Gazette   Saturday, October 17, 1981

RAYMOND N. BURNETT, Business Manager

Close out Nard case

John A. Nard of Bell Acres Borough is a curiosity; he has cost the taxpayers of the United States hundreds of thousands of dollars as he pursues a personal vendetta, and he continues to get away with it.

A little more than 14 years ago Mr. Nard signed a contract to build a meat packing plant for Armour and Co. in Pittsburgh and nine months later signed a second contract to build a similar facility for the firm in Sioux City, Iowa. Trouble began almost immediately between Mr. Nard and Armour and the falling out became total 15 months after the first contract was signed. They filed suits against each other in both Iowa and Pennsylvania in November 1968. Since then:

- Mr. Nard has contested the settlements reached in trials in the civil actions between himself and Armour in federal district courts in Pittsburgh and Iowa. In both instances circuit courts of appeal affirmed the settlements of the lower courts. Other appeals were similarly unsuccessful.
- Mr. Nard convinced the U.S. attorney in Iowa in 1971 to investigate charges of perjury by Armour witnesses in Mr. Nard's Iowa trial. The U.S. attorney did this, but a grand jury returned no presentment. The same U.S. attorney made presentments to two other grand juries at Mr. Nard's behest, this time covering questions of perjury in both the Iowa and Pittsburgh trials. These grand juries returned no presentments either.
- Mr. Nard brought suit in 1974 in a separate action in the U.S. district court in Pittsburgh, claiming he was denied a fair trial in the Pittsburgh civil case because important evidence was suppressed by Armour. His plea was denied after a hearing before a judge.
- Mr. Nard in 1974 pleaded guilty to not filing income tax returns for 1967 and 1968 and nolo contendere to tax evasion on his 1968 return. He was fined $10,000 and given suspended sentences. Before this, he had approached then U.S. Attorney Richard Thornburgh with complaints that his tax troubles, as well as his total lack of success in the district courts of Iowa and Pennsylvania, were the result of a criminal conspiracy. Mr. Thornburgh said he could find no such evidence.
- Mr. Nard has pursued his conspiracy theory since, petitioning, among others, the chief judge of the Third U.S. Circuit, two attorneys general of the United States, Mr. Thornburgh's successor as U.S. attorney in Pittsburgh and the current U.S. attorney in Iowa. The last man, James Reynolds, spent two years on an investigation that included the expense of sending two Secret Service interviewers around the country, only to have a grand jury reach the same conclusion: There was nothing to prosecute.

When it comes to having your day in court, that record would seem to have exceeded the expectations of even an unreasonable man. The matter should be over. But, no. U.S. Sen. Orrin Hatch, R-Utah, a former Pittsburgher and lawyer for John Nard, has employed staff of the Senate Judiciary Committee and his office for at least the past nine months in an investigation of Mr. Nard's claims of an ever-expanding conspiracy. Their principal target at the moment is that first Iowa U.S. attorney who took Mr. Nard's case to three grand juries and who is under consideration to become U.S. attorney again.

Last week they held a public hearing in Washington and issued a 71-page report, the gist of which was an undocumented assertion that the former U.S. attorney did not succeed because his heart was not in the Nard case. And why was his heart not in the case? Because the fix was in; the judicial and prosecutorial establishment of the United States for a decade has conspired to deny Jack Nard justice!

When asked by reporters how this could be so, given the public record, Sen. Hatch hemmed and hawed. When asked who had written the report upon which this conclusion was based, Sen. Hatch refused to say.

When asked how he could justify spending thousands and thousands of dollars of taxpayers' money pursuing the financial interests of a private citizen, a citizen who also just happened to owe him $25,000 in unpaid legal bills, Sen. Hatch said it was a matter of justice — and besides, he had excused the debt before he began the investigation. Then the senator observed somewhat wistfully, that, perhaps, it was time to close the Nard case.

It was the only thing that he — or anyone else involved in Mr. Nard's behalf — has said in seven years that has made any sense.

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October 15, 1981

Senator Charles Grassley
Senate Office Building
Washington, D.C.   20510

Dear Senator Grassley:

As President of the Black Hawk County Bar Association, I am enclosing for you a copy of a Resolution adopted by the membership of our Association at a regular meeting on October 14, 1981, as an expression of support for one of our members, Evan Hultman.

Very truly yours,

Richard A. Knock

Richard A. Knock, President
Black Hawk County Bar Association

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RESOLUTION

WHEREAS, Evan Hultman is a candidate for the position of United States Attorney for the Northern District of Iowa, and

WHEREAS, Evan Hultman has recently been the focal point of an investigation by the Committee on Oversight of Department of Justice, Public Integrity Section, of the United States Senate, and

WHEREAS, it is the opinion of the Black Hawk County Bar Association that said Senate Investigation Committee is being chaired and directed by a United States Senator who has proven by his own public disclosures to have a gross conflict of interest which in the opinion of this association should prohibit him from participation in said investigation in any role other than that of a party in interest, and

WHEREAS it is the opinion of the Black Hawk County Bar Association that said Senate investigation has been conducted to date with little or no procedural due process being afforded Evan Hultman, and

WHEREAS, it is the opinion of the Black Hawk County Bar Association that said investigation has been characterized by malicious public accusations of wrongdoing by the Committee Chairman without any substantial evidence to support such accusations and which have the intended effect of unfairly damaging Evan Hultman's professional reputation and his candidacy for the position of United States Attorney for the Northern District of Iowa.

NOW THEREFORE BE IT RESOLVED:

1. The Black Hawk County Bar Association publicly condemns certain practices of the United States Senate's Committee on Oversight of Department of Justice, Public Integrity Section and its Chairman, Senator Oren Hatch. The specific practices condemned are:

a. The Chairman of the committee conducting the investigation has a gross conflict of interest which under minimal standards of fairness would prohibit him from participating in said investigation other than as a party in interest.

b. Such lack of minimal procedural due process as would guarantee fundamental fairness to witnesses appearing before it.

c. Malicious public accusations of wrongdoing by the Committee Chairman without any substantial evidence to support such accusations and made for the intended effect of damaging Evan Hultman's reputation.

2. The Black Hawk County Bar Association publicly confirms its belief in the professional integrity of Evan Hultman and publicly endorses his candidacy for the position of United States Attorney for the Northern District of Iowa without hesitation or reservation.